

15. M. d.

AS

ELUCIDATION

OF THE

ARTICLES OF IMPEACHMENT

PREFERRED BY THE

LAST PARLIAMENT

AGAINST

WARREN HASTINGS, Esq.

LATE

GOVERNOR GENERAL

OF

B E N G A L.

By RALPH BROOME, Esq. K

CAPTAIN IN THE SERVICE OF THE EAST INDIA COMPANY ON
THE BENGAL ESTABLISHMENT,

AND

PERSIAN TRANSLATOR
TO THE ARMY ON THE FRONTIER STATION, DURING PART
OF THE LATE WAR IN INDIA.

L O N D O N:

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PICCADILLY.

M.DCC.XC.

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P R E F A C E.

MR. HASTINGS's Trial being ended, or at least suspended, by the Dissolution of Parliament, I am now going to fulfil the promise I made long since to the Public, namely, that I would put my real name to the Letters published in the ORACLE last winter.

At the beginning of the Work, the motive of my writing on this subject was declared by the Editor of the Paper. And I do here again most solemnly declare, that neither Mr. Hastings nor Major Scott, nor any other person of his party, ever suggested to me the idea of the work I published, nor of any thing of the kind. Whatever I have written upon the subject of Mr. Hastings's Impeachment, whether gravely or ludicrously, was perfectly my own, both in design and execution. A great part was sent to the Press without the inspection of any person whatever. Mr. Hastings never served me in his
a life,

life, either at home or abroad, consequently he could have no claims upon my gratitude. It may be asked then, Why did I write on a subject in which I was not interested? My answer is, that I was frequently in company where I heard gentlemen give their opinions without any knowledge of the question. I have heard many people cry, Mr. Hastings must be a very bad man, if a fiftieth part of what Mr. Burke accuses him of, be true, and when they were asked, what it was that Mr. Burke had accused him of, their answer always was, That they could not tell: That it was such an immense mass of confused matter, that they could not comprehend it; but they took it for granted that it must be something very bad, or Mr. Burke would not make use of such strong and opprobrious language. Instances of this nature happened very often, and one in particular in a northern county, which first suggested the idea of these Letters. It was to give the public a clear and impartial view of the Charges exhibited against Mr. Hastings, that I published the Elucidation, as the Printer was pleased to stile it, for I myself gave it no title or appellation whatever. It was my study to avoid giving offence to any man. I was at that time personally unknown to all the Managers, and consequently could

could not be inimical to them upon private grounds. If I thought differently from them, it was the effect of conviction operating upon my mind. Things that appeared to them criminal in the highest degree, appeared to me as absolutely necessary to the salvation of the British Empire in India.

Such was the confiscation of the Begum's treasure at Ferruchabad—By Mr. Sheridan, the act of urging a son to resume his property from his mother, was represented as a crime of the deepest dye. To me, the mother's detention of her son's right seemed more criminal in the first instance, than his forcible resumption of of it in the second.

The taxation of Cheyt Sing seemed to me, as far as I was able to judge from my knowledge of India Customs, Politics, and form of Government, to be full as just and equitable, as any tax that ever was imposed by a British Legislature, and the fining of him for disobedience was fully as equitable, and perhaps more necessary, than many of our penal statutes.

I could, upon the deepest reflection, discover no other difference than this, namely, that the acts of our legislature are too high for any power on earth to call them into question; and

the acts of the British government in India are not of so uncontrollable a nature.

Mr. Hastings, both in the business of Chyte Sing and of the Begums, did what he thought was justifiable by the Laws of India, and the customs of every government in the world. I am far from thinking that Mr. Hastings acted circumspectly or prudently in all that he did: but I am as fully convinced as human evidence and unprejudiced reflection can make a man, that in all the charges brought before the court, Mr. Hastings did what he thought was indispensably necessary, and therefore strictly justifiable. The incautious, and I may say imprudent manner, with respect to himself, in which he acted, is a strong presumptive proof of the purity of his intentions.

It was owing to this firm conviction in my mind, that I have in all companies, where the subject has been started, endeavoured to give those who chose to attend, a clear statement of the principal facts: and wherever I have thought Mr. Hastings wrong, I never scrupled to declare it. I am not the blind partizan of Mr. Hastings, nor am I the hireling as Mr. Burke has insinuated.

I do bid defiance to all mankind, to shew one

one instance of Mr. Hastings having served me, or even to shew any selfish view that I can possibly have in espousing his cause.

It never was my intention nor expectation to influence the minds of those who were ultimately to judge, by any writings of mine.

All I meant was, to prevent the Public from being led away by bold and hazardous declamation.

It did, and does appear to me a very cruel thing, that a man who had filled the highest post in India for thirteen years, who was acknowledged to have saved India, even by some of those who voted for the Impeachment; a man who governed a large tract of country to the perfect satisfaction of those who were subject to his authority. It did appear very hard to me, that such a man should be made the subject of the most bitter invective, year after year, without any person rising up in his vindication, or attempting to stem the torrent of abuse, by a plain and impartial narrative of facts.

I did not, however, mean professedly to defend or vindicate Mr. Hastings's conduct by the Letters I published; for in the statement of facts I was guided almost wholly by the evidence brought by the Managers themselves.

I began

I began the work with a declaration of candour, and a promise to correct any thing that should be mis-stated.

There were several publications against me.

One only, accused me of misrepresentation.

The charge was not without some foundation; and I corrected my error. I here allude to what I said of the capture of Bidjagur, namely, that *the offenders were too many for justice*. In calling them offenders I followed the opinion and judgement of the court at Calcutta, not knowing at that time that their decree was reversed.

Consequently, though all the facts were true, yet, as they were not held criminal on the last appeal, I had no right to call the Captors who precipitately divided the treasures they found, *offenders*.

Excepting this epithet, I do not know that any thing I said was called in question in point of veracity. There was some person who wrote against the Elucidation in the GAZETTEER, but I really think the Author not three removes from a madman. It is probable now that I put my name, the same writer will repeat his abuse; but unless he discovers himself, and publicly avows his work, I shall not think him worthy of my notice: neither will I answer any anonymous

mous publication whatever. A man who writes in a public paper under a fictitious signature, may say any thing without the risk of being shamed by detection. Such was the case with some person who, at the time I was subpoenaed to give evidence in Westminster Hall, inserted a paragraph in the MORNING POST, roundly asserting, that I owed my fortune to Mr. Hastings's patronage. I contradicted the assertion with my name to it: and a second paragraph appeared in the same paper, stating, that as they could not contradict what I had advanced, they must believe that I never had been under obligations of that nature to Mr. Hastings. Something similar to this I have heard with respect to the late Lieutenant-Colonel Eaton. It was said, and I believe very truly, that Mr. Hastings sustained a great loss by the death of that officer in point of testimony; yet was there a person found bold enough to affirm, that he had heard Col. Eaton declare, that his evidence would materially injure Mr. Hastings, of whom he always had thought ill. This affirmation called forth a Letter from Major Scott, stating, that Col. Eaton had been examined by Mr. Hastings's Counsel, and that his evidence was thought very important to Mr. Hastings's justification. It is not likely, by the bye, that
Col.

Col. Eaton thought ill of a man to whom he bequeathed a thousand pounds.

There is another circumstance which may have had some weight with me in the production of these Letters—I mean that indiscriminate abuse which some of the Managers, particularly Mr. Burke, have so lavishly bestowed on the Company's service. In that service I spent many years of my life, and owe to it the bread I eat. All general reflections are odious, and may, as Mr. Burke acknowledges, be treated as calumny. I should, however, think the less of this, if Mr. Burke did not occasionally make exceptions. Whenever it becomes necessary for him to call upon one of the Company's servants to give evidence, he is as lavish in the praise of his witness, if his testimony answers his expectations, as he is at other times in the condemnation and abuse of all the rest. The detestation in which I hold this kind of conduct cannot possibly arise from selfish feelings; for Mr. Burke has never mentioned my name, either in public or private, to my knowledge, nor is it likely that he ever will. My abhorrence arises from reflecting, that an accuser should be permitted in a free country, where every man's rights are so well defined, to destroy the character

racters of thousands in the lump, in order to convict and bring to punishment one man.

What must the public think of the enemies of Mr. Hastings, who wish to deprive him of every kind of evidence in his favour, by destroying the credit of those whom they think likely to speak favourably of him? It seems to be perfectly indifferent to many of Mr. Hastings's enemies, whether they are conscious of speaking truth or not. A bold assertion, they are in hopes, will pass with the public for truth; and if it will answer the purpose of the moment, they care for nothing more. This I know to be the case with respect to what was asserted of myself; and I may, by analogy, give them credit for the same with regard to what they say of others.

If ever I felt any indignation rising in my breast upon reading the publications against Mr. Hastings, it was not owing to friendship for the sufferer; it was an honest indignation rising up against a perversion of truth, and an artful attempt to inflame the public mind against the man who has rendered this country more essential service than all his enemies taken together.

I am aware that this expression may excite a laugh. It may be said, that Mr. Hastings may have rendered his country more service than all

his accusers, and yet have done very little, they having done their country no service whatever. Perhaps the expression would be less liable to cavil, had I said that Mr. Hastings had done his country as much good as his accusers have done mischief.

It may perhaps be objected to this work, and by no man more likely than by Mr. Francis, that the author's rank and situation was not such in India as to give him an opportunity of knowing and judging. To this I answer, that had any person of higher rank, of more knowledge and greater capacity taken upon him to give the public a concise and candid statement of facts, I would never have attempted it.

I did it because no one else did it.

It is true Major Scott has written a great deal, but his writings go so much into the detail that none but those who are deeply interested, will take the trouble to collect them and to read them with proper attention. This, however, I may venture to say of Major Scott's writings, and I have heard the same remarked by very many people, viz. that the facts are always with him.

In addition to what I have said in defence of my own writing on this subject, I might say, that I must be at least well qualified to
write

write on it, as Mr. Burke can be to ground an Impeachment on it.

I have these advantages over him, I was near 15 years in India, I understand the language of the country, I have read many of their histories, I was for a considerable time on a survey in the country, and afterwards one of the Persian translators in the field.

I had many opportunities of acquiring knowledge which cannot fall to the lot of those who never were out of this kingdom. I will not, however, find fault let who will call my knowledge in question.

Let him point out where I am wrong and I shall always be ready and willing to rectify my error.

But though I will not vindicate my knowledge, I defy all the world to accuse me of unjust or corrupt partiality in favour of Mr. Hastings.

I never sought his acquaintance or Patronage in India, and he has never been in a situation in this country to make his friendship worth seeking on the score of interest.

I never saw him till about three weeks before I left India, and about a month after I had asked the General's leave to resign the service.

I was

I was then barely introduced, and all that he said beyond the usual language of introduction was, that he had often heard of me and wished much to see me.

I never saw him again till he met me by accident at Cheltenham, where I dined with him once.

At dinner he expressed a wish that I would call on him at his house in town, where he wanted to show me an Arabic book, which was given to him by a native of India as a mathematical treatise, and supposed to contain problems unknown to Europeans.—I understood that I had been mentioned to him by some of the natives as the likeliest Englishmen to translate such a work, as it required a knowledge of Arabic and Mathematics, two kinds of learning seldom united in one person residing in India.

This invitation I did not accept, nor did I ever see him again till long after he was impeached.

I shall now conclude this Preface with a solemn declaration, which I defy all mankind to disprove, that I have never received any benefit or service whatever, directly or indirectly from Mr. Hastings, nor any promise from himself nor from any of his friends; and that whatever I have written was by the sole impulse of my

my own mind. And I do further declare that nothing ever prevailed with me to write at all on the subject, but a desire to keep the public mind from fixing its judgement till the Lords should come to a final decision upon the Impeachment.

I beg also it may be remembered, that though I have till now delayed signing my name, I authorised the Printer to give it to any of the Managers who were most interested in what I had said,

One satisfaction I have received since I began the Elucidation, namely, that the case of Deby Sing came out just as I stated it. Mr. Anstruther put it in the same way, he admitted Mr. Hastings not to be the immediate cause, but said that the cruelties committed by Deby Sing could not have happened under the former system. This was the way, in which Mr. Burke originally stated it, and when Mr. Fox made an invocation of divine vengeance on himself, if the truth of the story respecting Deby Sing was not established by evidence, he emphatically added *in the manner in which his honourable friend had stated it*. But the blame which I think justly imputable to Mr. Burke is the introduction of a story no ways connected with either of the charges in such a manner as to
make

make the deepest impresson on the minds of the audience, without putting it into the power of the accused to efface it by the production of oral or written testimony. If Mr. Burke believed all that he said, he ought to have made it an article of charge, and if he did not believe it himself, he ought not to have imposed the belief on others. There certainly are strong symptoms of an artful and premeditated intention to mislead the inattentive hearer into an opinion that Mr. Hastings was knowingly the cause of unprecedented cruelties. Such was the keeping the story of Deby Sing a secret even from his colleagues, who were as much surprized at it as the people in the gallery. His working himself up into such a paroxysm of pity and indignation as to faint at the recital of his own story. Tales of horror produce the strongest effects at the first hearing. Had Mr. Burke fainted when he first read *Paterfon's Collection* in his closet, I should have thought it a real affection of the nervous system, but that he should be more violently affected at his own reporting the story than he was at the first reading of it is very improbable, and I must agree with Mr. Hastings's friends, that it has the appearance of a stage trick,

*Si vis me flere dolendum est**Primum ipsi tibi.*

was the advice of Horace, and it is not impossible but Mr. Burke might think that to make the people feel he must set the example. Against these appearances we have Mr. Burke's professions of candour, and general character of unimpeachable veracity.

[illegible]

T O

THE PUBLIC.

THE occasion of writing the following Letters was this:—The Author happened one day this last summer, to be in company with several Gentlemen in a County distant from the Metropolis, where the pending TRIAL became the subject of conversation.—Curiosity, and a desire of knowing the public opinion, induced him for a time to conceal his having been in India from the knowledge of some of the company, in order that they might the more freely deliver their sentiments and opinions.—He was not a little surprised to find, that though every one in company gave a most decided opinion, there was not one present who had any real information on the subject.

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Mr.

Mr. Hastings, they said, had been guilty of the most atrocious barbarities, and deserved the most exemplary punishment. They inveighed with vehemence against his cruelties to the women. But what was their surprise in return, when the Author of these LETTERS informed them, that bad as Mr. Burke had represented Mr. Hastings's conduct, they, by misunderstanding him, had made it infinitely worse : that Mr. Burke never accused Mr. Hastings of inflicting, or ordering punishment to be inflicted on the women ; but that such things happened in consequence of Political Revolution, brought about by Mr. Hastings near two years before ; and lastly, that these barbarities, as had since been proved, never happened at all ? The Author told them also, that Major Scott had put the Public in possession of the real facts, in a Pamphlet published long since. To which they replied, that they had seen Mr. Burke's speech in the newspapers, but had never seen Major Scott's observations upon it. One of the company said, it was much to be lamented, that no person had yet undertaken to write a kind of history of the facts which are laid to the charge of Mr. Hastings. He said, that he had read a great deal on the subject at separate times, but that the narratives were so broken and interrupted, and so perplexed and confused with hard names, that he found it impossible to form any clear idea upon the subject.

The Author then engaged to write a few LETTERS for the information of the Gentlemen in that neighbourhood.—He at first thought, that nine or ten sheets of paper would have contained all the outlines of the business, and information sufficient for those who were not to decide ultimately upon the question. In this opinion he was somewhat mistaken, and has been insensibly led into a greater length than he originally intended. It is, however, a very short work now, compared with any production yet published on the subject.

It is not pretended, that these LETTERS give any New Light; or that all, and infinitely more, may not be extracted from the Reports of the Committee which have sat on the investigation of India Affairs, and from other publications. They will be serviceable to those only who wish to understand the substance of the Charges, and the Proofs in support of them, without the labour of reading many folio volumes. It has this advantage also, that every term is explained, and the whole brought down to the comprehension of the most uninformed English reader. At the same time, there are to be found arguments interspersed in these LETTERS, that may be of some use to men of more enlightened understandings.—It has this farther advantage, that the Author is no Partisan—he owes nothing in point of fortune to Mr. Hastings, nor his opponent, Mr. Francis. To the lat-

ter he is unknown personally, and very little acquainted with the former. In India he spent much of his time in the cultivation of Oriental Literature, and took every opportunity of increasing his knowledge, by frequent conversations with the most enlightened natives.

LET-

LETTER I.

SIR,

AGREEABLY to your request, and to my own promise, I now begin to give you some account of Mr. Hastings's Trial. I do not mean to detail all the arguments adduced on both sides; but merely to state the nature and substance of the *Charges*, and to shew the principal points upon which they turn; for, in general, the dispute is not concerning facts, but the Names or Epithets which those facts ought to bear; that is, whether they are criminal or not. Neither shall I follow Mr. Burke through his opening, or introductory Speech, which lasted four days; and, in some degree, destroyed its own force, by its vast length and perplexity. It will be sufficient to say, that he gave an account of the Religion, Customs, and Manners of the Natives of Indostan; that he traced all the Revolutions of that country, from the first Mahomedan Invasion of it, down to the year 1756, when the *English Interest* began to be of some weight in the political scale of the Empire.

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In the course of his narrative, he inveighed much against the injustice of the English, and mentioned many things tending to throw discredit on Mr. Hastings, whilst very young in the Company's service. But he said, that he did not mean to bring any criminatory matter against the prisoner, which happened previous to the year 1772, the time of Mr. Hastings's succession to the Chair at Bengal.

I know it is the wish of you and many others, to be informed more particularly of the real state of that story, which was detailed by Mr. Burke, concerning Deby Sing. There is something remarkable in this story: though it is not made matter of charge, yet it has hurt the character of Mr. Hastings in the eyes of all Europe, more than all the Twenty Articles put together. Of this Mr. Hastings complains heavily, and not without good reason; for had it been a separate article, or included in some other article, he might one day or other have had an opportunity of answering the accusation in the same public manner in which it was made; but as it stands, he has not, nor ever had the means of pleading to it, as he did to the written charges; I therefore do not see how he can refute it. It is true, Mr. Burke did say, that he held himself responsible for the truth of it, and bound to prove, by evidence, all he asserted in his Introduction, as well as in the Charges or Articles themselves. But I do not perceive at present any method of bringing the matter to issue, unless another article were added

to the present number, and that, perhaps, the Commons may not chuse to do.

If Mr. Burke meant, by the relation of those horrid cruelties, to inflame the minds of the Court and Audience against the Defendant, and thereby render them more easy of belief to other criminating matter, knowing at the same time, that he could not be called upon to establish the facts by evidence, he certainly acted unfairly. I must, however, in favour of Mr. Burke, observe, that had a dispassionate person read his Introductory Speech, instead of hearing it, or had he preserved the whole in his memory, he would have had strong doubts in his own mind, whether any of the facts, supposing them true, could in any shape reflect upon Mr. Hastings. Mr. Burke does not say, that Mr. Hastings either committed, or ordered any violence to be committed on the Natives; but he says, that Mr. Hastings was the author of a measure which eventually occasioned all those cruelties which he detailed in so affecting a manner in Westminster Hall. But there is a wide difference between being unknowingly and unforeseeingly the remote cause, and being the wilful and immediate cause of an event.

But to give you a clearer idea of the matter, I will state the substance of Mr. Burke's Speech, and Major Scott's Pamphlet in refutation of it.—The former says, that Mr. Hastings having by accident the Supreme Power in his own hands, changed the system of collecting the Revenues of Bengal, with

ELUCIDATION OF THE SUBJECT OF

no other intention than that of increasing his own power.

Here you perceive is the first point at issue—Mr. Hastings denies this intention. But before I proceed farther, I must explain the nature of that system which Mr. Hastings set aside; and also of that which he adopted in its room.

From the year 1773, the revenues had been collected under the direction of Provincial Councils.—To enable you to understand clearly what is meant by a Provincial Council, you may suppose the Revenues of this kingdom to be collected by a Board of Officers, stationed in the different Counties, and subordinate to the Treasury Board in the Metropolis. Of these Provincial Councils there were fix.

Their proceedings were transmitted to the Supreme Council at Bengal, which you may in this case consider as the Treasury Board here in England. Mr. Burke says, these Provincial Councils were formed by Mr. Hastings in 1773. Mr. Hastings says, they were neither of his formation, nor had they his approbation.

Here you will observe is the second point at issue.

It is necessary I should now take notice, that previous to October 1774, the Administration of Bengal consisted of a President and eleven Counsellors; Mr. Hastings was President, but could not always procure a majority in Council, and consequently often yielded to necessity.—Such appears to have been the case in the forming of these Provincial Councils;

cils; and, indeed, it must be observed, that from the time of forming them in 1773, to the time of dissolving them in 1781, the Administration was in a very unsettled state: I do not mean unsettled with respect to form or constitution, but unsettled with respect to the prevalence of party. The Council of Bengal, like all Political Bodies, were in general divided into parties.—And though Mr. Hastings had the majority before 1781, yet he held it by a very precarious tenure, and could not venture at great innovations. But in the year last mentioned, Mr. Hastings having the casting vote in his own person (there being only one member (Mr. Wheeler) of the Supreme Council then living, and in India) set aside the Provincial Councils, and established a Committee of Revenue at Fort William in their stead.

Among other reasons for the alteration, it is alleged, that Mr. Francis condemned the Provincial Councils in a minute standing on record. And it seems also, that the experienced utility of the new system justifies the measure; for it has continued, with some little alteration, ever since.

This new Committee consisted of the Company's Civil Servants, who had commissions on the net amount of the Revenue. Mr. Burke says, their emoluments were about 62,000*l.* a-year.—Here you will observe, that the difference of the two systems of collection is this—one Council or Committee did the business of six; and that Council, instead of being remote from the Presidency, was on the spot,

—This is all the change which I can perceive; for the old and the new Revenue Board were alike subject to the controul of the Supreme Council. Mr. Hastings appointed Goonga Govind Sing, a native, to be Dewan, or Steward to this new Revenue Committee.

It happened soon after the formation of this Council, that Deby Sing, the man of whom you have heard so much, was accepted by the Committee, as a Tenant for the province of Rungpore, at an advanced rent, for the term of two years. The first year things went on smoothly; the rent was paid, and no complaint made; but towards the close of the second an insurrection broke out in Rungpore, occasioned, as Mr. Burke stated it, by those abominable cruelties committed by Deby Sing and his agents, and which were detailed in Westminster Hall so much to the prejudice of Mr. Hastings's character.

Here a question must naturally arise in the mind of every reader—How is Mr. Hastings answerable for the conduct of Deby Sing? Mr. Burke contends, that his changing the system of collection makes him answerable for all its consequences. “I consider the Prisoner (said Mr. Burke, with great energy) responsible for all the acts of Deby Sing, and doubly responsible, if he knew him to be a bad character at the time he was accepted Tenant to Rungpore.” The first part of this assertion must have been made in the warmth of elocution; and I dare say, Mr. Burke would give it up on reflection.

But to the second, I suppose every person will agree. If the alteration in the collection of Revenues was made to increase their amount, it was certainly a very laudable act, particularly at that period, when money was so much wanted for carrying on the war. And though the change of system may have opened an inlet for Deby Sing and others, yet Mr. Hastings must be considered as the very remote, and perfectly innocent cause of whatever happened in consequence of his admission. But, by the bye, I do not see why Deby Sing might not have been employed in the collections under one of the Provincial Councils, as well as under the present Revenue Council; and the same things have happened in that way as in this. At any rate, it is absurd to charge the author of any innovation with every consequence that he could not reasonably foresee at the time of making it.

Mr. Burke's reasoning would carry the offences he imputes to Mr. Hastings up to Lord North, as the minister who appointed or recommended him to the office of Governor General.

If Mr. Burke can establish his proposition, that Mr. Hastings changed the old system with a view of increasing his own power and emolument, and to let loose his bribe-brokers and plunderers (as he calls them) on the country, Mr. Hastings is certainly reprehensible in the highest degree. It would be a much heavier charge against him, than all the Twenty Articles thrown together into one scale.— Mr. Burke, you may be assured, is perfectly sensi-

ble of this, and nothing prevented his making it matter of charge, but the impossibility of proving the intention. Whoever attended to Mr. Burke in his opening Speech, and imputed any part of Deby Sing's guilt to Mr. Hastings, must have given that Gentleman credit for the motive he imputed to Mr. Hastings.—I say imputed, because Mr. Burke did not say he could prove that avarice and love of power were the motives, but that he could impute the Prisoner's conduct to nothing else. He gave his reasons for thinking as he did. He said, that Goonga Govind Sing was a dependant on Mr. Hastings; that in the capacity of *Dewan* he had the whole management of the Revenue business in his own hands; and that the members of the Committee sunk into insignificance—that Deby Sing was introduced into office by the influence of Goonga Govind Sing; and that Mr. Hastings, through the medium of the latter, was the real, though concealed mover of every thing.

There is one thing which Mr. Burke in his hurry seems to have overlooked, or, perhaps, not to have credited; I mean the evidence of Mr. ANDERSON, who was one of the Revenue Committee, and by whose recommendation, joined to Mr. Shore's, Deby Sing got his appointment. By this Gentleman's evidence it appears, that Goonga Govind Sing was averse to the employing of Deby Sing, and remonstrated, though ineffectually, against it. It appears also, that the appointment of Deby Sing originated in the Revenue Committee, and not in the

the Supreme Council. Mr. Hastings, it is true, knew of it, and disapproved it; but yielded to the recommendation and wishes of the members of the Committee above-mentioned.

This breaks the chain of Mr. Burke's reasoning; for you see he traces it link by link in this manner: Deby Sing was the agent of Govind Sing, and Govind Sing was the agent of Mr. Hastings. But Mr. Anderson proves, that so far from Deby Sing's being the agent of Goonga Govind Sing, he was put into power contrary to the latter's inclination.—If Mr. Burke adverted to this circumstance, and did not state it, I make no doubt but you will think it a want of candour.

Major Scott, both in a speech he made in Parliament, and in a pamphlet which he published, charged Mr. Burke with premeditated misrepresentation; but I by no means go that length. On the contrary, I think in the immense mass of evidence, and different matter before him, he might easily overlook some parts, and thence be led into erroneous conclusions.—But I pass over this, as foreign to my purpose: I am neither going to accuse nor vindicate the conduct of Mr. Burke; but I must now inform you, that when the Council, or Committee of Revenue, were informed of the complaints made against Deby Sing, they sent Mr. Patterson, an assistant in that department, to inquire into the truth of them. He went into the province of *Rungpore*, where he collected a vast bundle of papers, filled with those dreadful stories you have already
heard

heard of. This, you are to observe, was an *ex parte* examination; that is, Mr. Patterson heard only one side; and Deby Sing, as may naturally be expected, denied the facts.

The Committee of Revenue not thinking these reports of Mr. Patterson sufficiently authentic to ground a decision upon them, the Supreme Council deputed three European Gentlemen in the Company's service, to inquire more minutely into the facts alledged against Deby Sing. These Commissioners were sworn in the strictest manner, to make a diligent, just, and impartial inquiry. They proceeded to *Rungpore*, and Mr. Patterson either went with them, or followed them to that place. Great disputes, naturally productive of delay, arose between the Commissioners and Mr. Patterson; and you will think it strange, when I tell you, that the Supreme Council, of which Lord Cornwallis is the head, did not come to a decision on this business till last November, though it had been then pending five years.

From inspecting this decision, and the report of the Commissioners, upon which it is founded, it appears perfectly clear, that those abominable cruelties, which so affected the audience in Westminster Hall, never happened; but still it is equally clear, that great oppressions did take place. Lands fraudulently and violently purchased, were restored to their owners, and large retributions were made to the sufferers. A native, named Hurram, was held by the Supreme Council to be more culpable than
his

his principal, Deby Sing, but the latter was not acquitted.

Before I take leave of this story, I must make this remark :—Mr. Hastings's conduct subsequent to the accusations brought against Deby Sing, seems to have been directly the reverse of what one would naturally expect from a friend or patron. When he saw Mr. Patterson's reports, he seems to have given more credit to them than any other person, for he caused Deby Sing's suspension from office, under a conviction that no fair inquiry could be made whilst his power continued, making at the same time a promise of indemnity, if the supposed criminal was found innocent.

There are other minutes of Mr. Hastings's upon record, which shew his dislike and distrust of Deby Sing; and it is morally certain, that had Mr. Hastings been any way implicated in the business, he must, and would have settled it long before he left the Chair. There was no want of time or means, had he thought it necessary to smother the truth.

If you read with attention what I have written in this letter, it will impress your mind very forcibly with the truth of the Latin adage, *Nimum ne crede colori*. The caution is applicable to all colourings whatever. Mr. Burke represented Mr. Patterson's reports, collected in the manner I have stated, as indubitable truths. "Had he not found them on the Company's records, he should not have believed them;" but had he said also, that though they are upon record, yet the authenticity of these
re-

reports must depend on the veracity of the natives of the province of *Rungpore*; and if Mr. Burke had known those people so well as I do, he would have received any narration from them with many grains of allowance. It is true, Mr. Burke did take notice of the Commissioners sent to make a farther inquiry; but the manner in which he represented it, made the audience suppose, that their business was rather to smother the truth, than expose it. The Committee of Revenue, which was composed of old servants, were not to be led away by exaggerated complaints; they well knew that lying, which is held abominable in this country, is not scandalous in that. The most jealous man of his honour does not resent being charged with falsehood. Amplification (I wish the word were expunged out of rhetoric) is used more in the East, than it is in Europe, by the most diffusive orators.

It has oftentimes been a question in my mind, whether the study of *Oratory* and *Rhetoric*, as a science or art, is not more prejudicial than beneficial to society. It is certainly beautiful and pleasing; but, like most beauties, it is deceptive. It has more or less effect in proportion to the weakness or strength of the hearer's mind. Oratory seldom misleads the judge, but it does the jury, almost in every instance. The former sees through it, but the latter do not. I have long adopted one rule for the guidance of my own judgement. I do not know whether you will approve or condemn it—It is this: the more a speaker labours a point, the more I am in-

inclined to suspect it; and consequently more exact in weighing his arguments; and whenever I hear a declamatory speech, full of strong epithets, either for or against, I strip the matter of all its dress, and then take a review of all the real information I have obtained. It is in this way I hear Mr. Burke's speeches, and read Major Scott's pamphlets; and it is in conformity to this rule, that I have collected the matter which I mean to give you in the course of these Letters.

I have now done with the story of Deby Sing, and have only to say, that it were to be wished that Mr. Burke would take a review of all the circumstances, and state them candidly in some future speech, as publicly as he did before; or think of some method of bringing them before the court in such a shape as Mr. Hastings might answer them.— This is no more than common justice, and I dare say, Mr. Burke and his friends will not think otherwise on this subject.

I have been often asked to give my opinion of Mr. Hastings's character. I have as much as possible declined it; for I think the opinion of one who has been under his command, may be justly suspected. The question is almost tantamount to asking—"Did he serve or dis-serve you?" However, with respect to the character before us, I can say this—I never heard him accused of *Avarice* or *Cruelty* even by his enemies, till I heard it from Mr. Burke in the House of Commons. If he really is avaricious, he has carried on the most successful hypocrisy for

thirty years, and in a manner of which I believe there exists no example.—With respect to cruelty, all who knew him by name or person in India, will acquit him of that crime: that part of his character he may leave to his enemies. He was always esteemed humane and compassionate, even to weakness; and he knows that he has often been the dupe of fictitious distress.—In regard to his *political character*, I can only say, I have heard it applauded, and I have heard it condemned. But in the course of my life, I have so often found cause to change my opinion upon better information, that I scarcely ever fix it, but keep my mind open to conviction. The appearance of a natural object changes with the place of view, and it is only when the eye is in the center of observation, that it can see and judge of all its parts. The same holds good with respect to mental perception; but strange to tell, though every man acknowledges the truth of the proposition, very few take it with them into practice. It was a just observation of Swift's—we know a little, presume a great deal, and so jump to a conclusion.

I once heard a gentleman of great elocution haranguing against Mr. Hastings's conduct in a public coffee-room. He mis-stated many facts, and drew many wrong conclusions. I asked him a few questions, when finding himself unqualified to answer them, he very coolly acknowledged he knew nothing of the matter. I could not resist the momentary impulse of saying, though perhaps rudely, that his

knowing nothing might have been a reason for his saying nothing.

I shall conclude this Letter with observing, that whatever errors I may fall into, in stating the subject matter of the present *Impeachment*, they must proceed from the head and not the heart. Mr. Hastings neither served or dis-served me; I was known to him by name, but not by person, till a very few days before he left the Chair at Bengal; I therefore owe him nothing but justice, in common with all those who speak of his character and conduct,

Da

LET.

LETTER II.

FIRST ARTICLE *of the* IMPEACHMENT

ON THE

BENARES CHARGE.

SIR,

I SHALL now proceed to state the *First Article* of the *Impeachment*; for you are to remember, that what I have already related, makes no part of the *Charges* voted by the Commons.

In perusing my former letter, it cannot have escaped your observation, that had Mr. Burke's statement been perfectly correct, it could have amounted to nothing more than suspicion, and that suspicion founded on imputed motives.

In order to give you a clear idea of the merit or demerit of the case I am now going to enter on, I must give you a general notion of the Indostan Government. The want of this preliminary knowledge renders the subject very perplexed and obscure to English readers—many people also fall into great mistakes, from comparing Eastern transactions with the laws of Great Britain.—Mr. Burke himself is not exempt from this failing.

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The word *Indostan* signifies the *Country* of the *Hindus*, who may be called the *Aborigines* of the country. Of this people you have read and heard enough, without needing that I should add to your stock of knowledge. It is near 800 years since *Indostan* was first invaded, and partly subdued by the Mahomedans: but I date the commencement of the Mahomedan Government in *Indostan*, from the invasion and conquest of it by Timur, or Tamerlane, as he is called in Europe. The descendants of this conqueror have sat on the throne upwards of three centuries. You must remember, that when I speak of the Government or Constitution of India, I mean the Policy or Administration adopted by the family of Timur. Being Mahomedans by Religion, they consequently took the *Coran* for their guide in religious concerns; but in Politics they adopted the customs of the Tartars.

Before the conquest of *Indostan* by the Mahomedans, the country was in the possession of many Rajahs; some were independent, and some were in a state of subordination. Those who submitted, and made their peace with the conquerors, were permitted to hold their lands, upon paying certain stipulated sums annually. In the course of their history, we find that the empire was divided into twelve Subahs, governed by as many Subahdars, whom you may compare to the Lord Lieutenant of Ireland. These Subahdars were appointed by the King, and removable at pleasure. In every Subah there

there was a Dewan appointed for the collection of the revenues from the Rajahs who held the lands.

I must here explain the meaning of the words Rajah and Zemindar, which, as I shall often use them, would, if not explained, be productive of much confusion—Zemindar came in with the Mahomedans, it being a compound word of Arabic and Persian derivation, and signifies Land-holder, Zemindary means the Lands in possession of the Zemindar. Every man who held lands under Government was a Zemindar; but every Rajah was not a Zemindar, because there are many who bear the name of Rajah, and yet have no land or dominion; neither was every Zemindar a Rajah.

The word Rajah is analogous to Lord, in its double sense, as it may be a mere title of honour, or expressive of dominion. It is very common for the King of Indostan to confer the title of Rajah on any favourite Hindoo, and at present it may be purchased. The title is confirmed by a deed or writing, as Peerages are in this kingdom by patent. I must caution you to distinguish between names that are honorary, and have no particular duty or office annexed to them, and those that are official; that are acquired and lost together with the post or office; for example, any Hindoo may obtain the title of Rajah without any power or possession being derived from it; and any Mussulman may be created a Nabob in the same way.

You may sometimes hear of Nazim and Nizamut; the latter signifies a great division of the Empire, and

and the former signifies the person who presides over it.

The Subahdars or Lieutenants had their deputies in different parts of their Vice-royalties, some of whom were of the rank of Nabob, and some of inferior degree. There were courts of justice in every district, which decided between subjects according to the Muslim law in some cases, and according to the Hindoo law in others. It often happened, that the Subahdars and Dewans were guilty of oppression, and being beyond the reach of the ordinary courts of law, the injured had no redress, except by application to the throne. Most of the Emperors or Kings of Indostan were easy of access to their injured subjects, and a certain portion of time was dedicated to the hearing of complaints in person. There are many instances of exemplary punishment being inflicted on state officers of the highest rank and consequence. A Subahdar could not deprive a Zemindar of his lands, provided he paid his share of the revenue with punctuality, and committed no act of disobedience: but if the Subahdar punished him for a supposed offence, the King, upon complaint, made his own ideas of right and wrong the rule of his decision. No Emperor suffered his Subahdars to tyrannize, if he could prevent them, but insisted on their conforming to the laws of the Coran, as far as that book could guide them, and where it failed, to conform to the customs of the country, and in every thing to act conscientiously. But when a Zemindar was disobedient, the Subahdar chastised him

him according to his own discretion; and when the punishment was too severe, redress might be had by appealing to the Throne.

Such was the state of the empire till the death of Alungeer, better known in Europe by the name of Aurengzeeb. It was very usual in the times of Akbar, Jehangeer, and others, for the Emperor's Sons to be Subahdars of distant provinces; and there are many instances of their rebelling against the authority of their Fathers. After the death of Alungeer, violent contentions broke out between his Sons, which much weakened and narrowed the bounds of the empire. We have no history of the Mogul empire in Indostan, that comes down lower than the twelve first years of the reign of Alungeer. It is said that he forbade the writing of the History of his own Times; yet I have a book which gives an imperfect account of his reign for thirty years after the above-mentioned period. I had also not long since, the perusal of a book written for the use of a particular European Gentleman by a native of Delhi, which commenced with the death of Alungeer, and ended with the accession of Shah Allum, his present Majesty. In reading their several histories, I have observed that the bounds of the empire have been frequently changing, sometimes more narrow, and sometimes more extensive, and that the Mogul authority was never universally acknowledged throughout Indostan. Their history is nothing but a series of rebellions in different parts of the empire, or perhaps more properly, of struggles for

for independency, made by the Indian Rajahs against sovereignty, which derived all its rights from the sword, under the direction of an intolerant religion.

I know Mr. Burke denies the existence of arbitrary power. If by this he means, that no man ought to exercise arbitrary power, or to make his own will the rule of action, I readily subscribe to his opinion. But if he means, that no state ever was governed by the discretionary will of one man, his assertion is positively wrong.

The word arbitrary is liable to much cavil: people generally connect the idea of injustice and oppression with it; but I do not use it in that sense. When I say that a man possesses arbitrary power, I mean that he is at liberty to act as his own discretion may direct him. If he is a wise prince, he will use his authority to the good of his people; if not, he may act oppressively. Instead of arbitrary, I shall in future use the word discretionary; and when I mention discretionary power, I mean that the person possessed of it, is not obliged to consult any judgment but his own. The Mogul Emperors, in political administration, are perfectly absolute and discretionary, yet generally just in their decisions. But in fact, how can they be otherwise than discretionary? The people have no Magna Charta to define their just rights: they have no word to express Prerogative, nor durst any writer there attempt to limit the rights of the Sovereign.

The subjects were sometimes very patient under oppression, and at other times flew to arms upon

trifling provocation. I beg here to be understood, not as an advocate for a despotism which denies the rights of the people, but only as saying that their rights are not defined in India, nor contended for against the sovereign authority. I never met with an Oriental book that started the idea; but the general scope of all their writings is to convince Monarchs, that their true interest lies in conciliating the affections of the people. Almost every book abounds with this kind of morality; but I never read a line in any one of them, that tended to distinguish between the Prerogative of the King and the Rights of the People.

The inhabitants of India have a religious veneration for the family of Timur, and though they make little scruple at shedding Royal Blood, they hold it indispensably necessary, that one of that race should be on the throne. They are regardless of primogeniture, and as ready to acknowledge the youngest son as the eldest. There is no instance in their history, of a subject not of Blood Royal aspiring to the Throne; but whatever his ambition may be, he performs every act of despotism in the name of some Prince of the Blood, whom he places upon the Throne for the occasion. Since the death of Alimgier the empire has gradually declined. Subahdars who had been removeable at pleasure, fixed themselves and their descendants in their respective governments; but their claims to perpetuity are founded on the King's weakness, and not on the customs of the empire. Subahdars now confer provinces and zemindaries on their dependants, without

out consulting the King; and the Grantees accept their grants, without seeking the Royal confirmation. The case was very different in the days of Akbar, and some of his successors.

I shall conclude this long, but necessary explanation, with observing, that all the acts which properly appertained to the Royal Authority, are now, of course and of necessity, exercised by the usurpers: sovereign Authority must exist somewhere. Such as I have described, is the actual present state of every province in the empire, to which the English Government has conformed, only because so it found it. I have been very particular in stating the former and present Constitution of India, because I may often have occasion to refer to it, and also because no man can form any judgment of the merit or demerit of Mr. Hastings in this Article of Impeachment, without a perfect knowledge of the government of Indostan.

Sefder Jung, a man of great rank and importance in the empire, was made Subahdar of the province of Oude, by the Emperor Mahomed Shah. The empire was then weak, but it has grown gradually weaker ever since; and as it has never been in the power of the King to recal the great Subahdars, the son and grandson of Sefder Jung have retained possession of Oude ever since the appointment of the latter.

The produce of Benares was an appendage of the Subahdary of Oude, and at that time under the Magistracy of Rustum Ally.

I find myself here under the necessity of making a short digression, in order to give some account of the parentage of Cheyt Sing; for you well know that he has been represented as a great Prince, which has led many people to consider him in the same light as they do a Prince of the German Empire. To be sure, the term Prince, like most other titles of rank, is very indefinite in its signification; and to this want of precision and exact analogy between Indian names and English names, I attribute a vast part of that confusion and perplexity, which many readers complain of in the speeches of those Gentlemen who conduct the prosecution. Many of the apparent inconsistencies in the Minutes of the Supreme Council at Bengal would be reconciled, if this difficulty could be removed. Every person who ever attempted to translate from one language to another, must have often found himself embarrassed in a selection of correspondent terms: and if this difficulty be great in comparing European languages with each other, how much must it be enhanced, in comparing European terms with Asiatic, when customs, offices, and every thing are so different.

The grandfather of Cheyt Sing was a Bramin, named Monseram, who at the time that Sefder Jung first obtained his Subahdary, had the management of a small division of land, yielding a revenue of about 500l. a year. His good conduct recommended him to the notice of Rustum Ally, the Aumeldar or Governor of the district of Benares, who made him his Dewan, or Steward. The management

agement of Benares was left to his care, while his patron gave himself up to indolence and pleasure. Monseram took advantage of Rustum Ally's inactivity, and by intrigue, accompanied with offers of an increase of revenue, obtained from Sefder Jung, their common superior, the dismissal of his Master, and his own appointment to succeed him in the Government. The title of Rajah he obtained by purchase from the King, in the manner I have before described. He continued in his office till his death, and obtained a grant of the succession to his son Bulwant Sing.

Sujah Dowla, son, and successor to Sefder Jung, frequently wished to dispossess Bulwant Sing of the province of Benares; but as he, in quality of Subahdar, had made himself independent of, or at least uncontrollable, by the Emperor, so Bulwant Sing was become strong enough to dispute the authority of himself. Their differences were always sealed by a pecuniary composition, which the vassal in India generally has recourse to, to appease the anger of his offended master.

Chey Sing is the son of Bulwant Sing by a daughter of a Ragapoot Zemindar, who fell into his hands by the chance of war. The lady not being of so high a cast as Bulwant Sing, could not legally become his wife; he however did marry her, in defiance of one of the most sacred institutes of their religion. By a former marriage, Bulwant Sing had a daughter, who was the wife of Doorgbegey Sing, and mother of Rajah Mahads Narain, the present

present Rajah of Benares.—From this account, you may judge what pretensions Cheyt Sing has to the title of Prince. The true light in which he ought to be considered, is that of a Steward or Trustee for his superior, the Subahdar, and removable at pleasure. It is certain, that his grandfather Monferam must have considered the administration of the province of Benares in that light, when he by intrigue supplanted his master, Rustum Ally, in the office.

There is a wide difference between a Zemindar who is the proprietor of the lands, subject to certain payments, and whose issue generally succeeds him, and an Aumeldar, Renter, or Steward, whose appointment is only temporary.

This is one of the points at issue between the Managers and Mr. Hastings: for they represent Cheyt Sing sometimes as an independent Prince, sometimes as a tributary, and at other times as an ally. I must confess, that though I have often heard the Managers describe the official character of Cheyt Sing, I never could put their ideas together in my own mind, so as to fix to him any public character at all. I don't know whether I have expressed myself intelligibly or not, but I mean, that were you to ask me, in what light do they consider Cheyt Sing's public character, I must answer, I cannot discover it. But it is most essential to the cause, to inquire into the nature of Cheyt Sing's rank and situation in the Empire; for I know many people look upon the displacing of him as the expulsion of a

King

King and the overthrow of a kingdom; whereas, in fact, it is nothing more than the chastisement of an ennobled Steward or Trustee.

In the year 1770, Bulwant Sing died, and as he was said to have rendered some service to the English interest during the war with Coffin Ally and Sujah Dowla, the Court of Directors recommended him to the attention of their Presidency at Fort William. Upon these supposed services, Mr. Burke lays much stress, with a view of shewing the English ingratitude, in expelling his son. There are, however, Minutes of Council, supported by the evidence of Mr. Stables, which make these services very doubtful. In compliance with the above-mentioned recommendation, the Presidency obtained for Cheyt Sing, from Sujah Dowla, the succession to his father's office. The deed of stipulation between the Subahdar Sujah Dowla and his appointed officer Cheyt Sing, is frequently called a treaty: that term may be very proper, but it is apt to excite the idea of an agreement between two contracting powers, independent of each other; whereas, in fact, it is of the nature of a grant. Sujah Dowla granted the administration, or aumeldary of Benares and Gazapore to Cheyt Sing, upon his paying a kind of heriot or fine, in present money, to the amount of 200,000*l.* and engaging to pay annually about 230,000*l.* This settlement remained undisturbed for three years, when another negotiation took place in favour of Cheyt Sing, of which Mr. Hastings was chief conductor. The intent of this second negotiation

tion I do not clearly comprehend, unless it were for the purpose of guaranteeing the office to Cheyt Sing and his posterity, and interdicting Sujah Dowla from exacting more than the rent already stipulated. But I think both these points were included in the first grant.

Be this as it may, in a very short time, the Vizier Sujah Dowla wanting, or foreseeing the want of money to carry on a war with the Rohillas, demanded of Cheyt Sing an aid to the amount of 50,000*l*. He pleaded the guarantee; and the Company's servants interfering, the demand was abandoned, not because Sujah Dowla thought he had no right to the aid, but because he had not the certain means of enforcing it.

Here I must refer you to the constitution of the Empire, whereby you will perceive, that the interference of the Company was unconstitutional in the extreme, not in one instance only, but in every stage of the business: it is reconcilable only to the *jus fortioris*, which, if acknowledged, legalizes every thing.—It is true, the Mahommedan government was founded on usurpation; and I am afraid, if we carry our inquiries very far back, we shall find all governments in the same predicament. But when a government is settled upon some fixed principles, and there are rules and customs established for the ascertaining of rights, we may compare actions with those rules and customs, and say of them, they do, or do not conform to the rules. For if we examine the validity of rules and customs, and allow nothing

thing to the operation of time, I am afraid that all the distinctions of right and wrong will entirely vanish.

In tracing up rights, we must stop somewhere, and shut our eyes. We can have no idea of right and wrong, but as it accords or disagrees with some known rule, precept, or maxim. But the rules or laws of right and wrong with respect to property, not only vary in different countries, but are in a perpetual state of fluctuation in one and the same country.—Now, if we examine the conduct of the Company's servants by the doctrine I have just laid down, we shall find it irreconcilable to the constitution of the Mogul empire, but perfectly reconcilable to what they conceived to be their duty, namely, to advance the interest of their masters.

In their attempts to make Cheyt Sing as much as possible independent of the Subahdar Sujah Dowla, their policy was not to serve Cheyt Sing but to weaken the power of Sujah Dowla. He had been, and might be again, they thought, a formidable neighbour—Their idea was, *divide et impera*, and in effecting their views they considered not the legality of the means. The restrictions they laid on Sujah Dowla, they never meant to lay on themselves. Mr. Fox seems to argue this point upon the Christian precept, "Do unto others as you would that they should do unto you." This is certainly an admirable precept, both in theory and practice, among subjects under one government; but the history of mankind shews, that it is impracticable in politics,

at least I cannot find that it ever has been in use among states and statesmen, the most scrupulous of whom have never carried their observance of the Christian precept farther than "to do unto others as they *knew* that others would do unto them."

There is something very peculiar in this case: while all Ministers of State have been applauded and honoured by their country, for making advantageous agreements and treaties with the neighbouring powers, without even inquiring into the means of obtaining these advantages, the Company's servants are called upon by their own countrymen to reconcile their political conduct to the rigid rules of morality.

I have shewn that the Company's servants exercised an authority which belonged only to the King; but in justice to them I must say, that they took things as they found them. They found the Royal Authority crippled, I may say, suspended; and it was not the English interest to restore it. In the reign of Alumgeer, Cheyt Sing would not have sought the Company's Guarantee to shield him from the demand of his superior, nor would he have thought Sujah Dowla's grant of the least validity against a succeeding Subahdar, nor against the Grantor, if he thought fit to revoke it. Bulwant Sing, and his son would, if they had had interest sufficient, have procured a Sunud from the King, in expectation that he would support his own act against the Subahdar. But as the Royal Authority was not efficient, Cheyt Sing thought a guarantee from

from the Company, who had 20,000 regulars, a much better security.

Here you observe Cheyt Sing was not afraid of a change of Subahdars, because they were too strong to be removed, and had assumed to themselves sovereign authority; but he could not trust his master, and therefore called in the Company's security. The Company's servants came into the measure, because, as I said before, it was their interest to weaken the power of Sujah Dowla, by rendering Cheyt Sing as independent as possible.

I think I have shewn to a demonstration, that the conduct of the Company's servants, of late, and of Mr. Hastings in particular, is not inconsistent, when compared with the object of their employment, namely, the promotion of the Company's interest in India; though there may be apparent inconsistencies, when one part of their conduct is compared with another. To exemplify this: It was the interest of the Company to restrain Sujah Dowla's authority over his vassals, but not to submit to the same restrictions themselves. For my own part, I consider Cheyt Sing as almost out of the question; for if the Company procured for him immunities and advantages to which he had no claim, either from birth, inheritance, or rank, and afterwards thought fit to withdraw these immunities, he certainly had no cause to complain. He may be thankful for what he had received. If any person had a right to complain, it was Sujah Dowla, who was forced into grants he did not like to make, and restrained from the exercise of

the customary authority of his office; I mean with regard to the settlement on the death of Bulwant Sing *, and to the second treaty negotiated by Mr. Hastings †; for when the first settlement was made with Bulwant Sing, Sujah Dowla was indebted to English clemency ‡, not only for the sovereignty of Benares, but for the restoration of all his dominions, which he had lost by the common mischance of war. No doubt he would have resisted the Company's second application, if he had been strong enough, and he would have complained of their injustice, had there been any power, able and willing, to redress the injury.

But to return to the narrative.—Sujah Dowla, the Subahdar of whom I have been speaking, died in February, 1775, and his son Asoph ul Dowla succeeded him in the Subahdary. Whether he was confirmed by the King, I know not, but he exercised all the rights of it, the same as his father had done. Cheyt Sing of course became his vassal and dependent.—It is evident Asoph ul Dowla did not consider himself in every respect as possessed of Sovereignty; and that he acknowledged the supremacy of the King in some points; for we find him purchasing the rank and office of Vizier of the Empire, the duties of which were performed by a Deputy.—The new Subahdar being in want of money, demanded of Cheyt Sing the loan of 50,000*l.* by way of advance. He refused it, and the Council encouraged him in the resistance.

* In 1770.

† In 1773.

‡ In 1765.

The Managers lay great stress upon this; for they say, if Mr. Hastings and the Council would not permit either Sujah Dowla or his son to treat Cheyt Sing as a vassal, what right had they to treat him as such when they became his superior, or Lord Paramount? The answer is here as before. The Subahdar of Oude had been formerly powerful enough to endanger the Company's existence in India, and the Council wished to abridge his power; but they did not mean to do away their own rights by the restriction they laid upon their neighbours. If this doctrine is not sound, and if the conduct of the Company's servants is not justifiable upon these grounds, I am afraid that the conduct of every state towards its neighbour will incur the like condemnation. Upon this principle all states act: they all endeavour to preserve the balance of power; but in the means of keeping up this equilibrium, they seem in general to lose sight of those moral rules, which do, or should guide the conduct of individuals living under the same government.

I must now call your particular attention to what immediately follows. Soon after Cheyt Sing's refusal of the loan, the Supreme Council, of which Mr. Hastings was Governor General, thought proper, but upon what grounds I cannot learn, to demand of Asoph ul Dowla, the transfer, or cession of Benares and Gazipore, to the Company. Mr. Hastings remonstrated against it, and contended, that the demand amounted to a flagrant violation of a treaty made between his father Sujah Dowla, and his heirs, on the one part, and the Company on the

other, ten years before. The Council persevered, alledging the expiration of the treaty with the death of Sujah Dowla, and obtained the cession of the said provinces.

The Court of Directors thought it a violation of the treaty; but as they obtained the addition of 23 lacks of rupees annually to their revenues, they did not express much dissatisfaction, nor did they ever command restitution to be made.

It must appear matter of wonder to the unprejudiced observer, when he reflects that one Gentleman, who was a very efficient and active Member of Council in procuring this extorted cession, should now be among the foremost to call Mr. Hastings to account for breach of treaty. Mr. Hastings's conduct towards Cheyt Sing, (taking it as the Managers represent it), sinks into insignificance, when compared with the conduct of the Supreme Council towards Asoph ul Dowla. Their demand is not justifiable by the law of nations, nor by the laws of the empire: they had not even the plea of necessity; for the Company was then at peace, and in a flourishing state. I do not mean to infer, that Mr. Hastings is the more innocent, because Mr. Francis is the more guilty. The perpetration of a great offence, cannot justify a less.—The only impropriety that strikes one, is the not impeaching Mr. Francis for his share in the violation of a treaty, whereby Asoph ul Dowla was robbed of provinces worth 400,000 l. a year, whilst Mr. Hastings is impeached for compelling Cheyt Sing to pay an extraordinary aid,

aid, and that to a very small amount, in the time of actual war.

This circumstance must strike every body very forcibly, who considers it for a moment. It cannot have escaped Mr. Burke; and why Mr. Francis is not impeached, I cannot yet understand. Mr. Francis probably would say, that the Subahdary of Oude reverted to the King, according to the customs of the empire, and that Asoph ul Dowla was an usurper. True, it did so; but then the King was defrauded of his just right.—Whether we consider the King's rights existing in full force, suspended by want of power to enforce them, or extinguished by usurpation, it never can be maintained that the India Company had any right to extort from Asoph ul-Dowla the ceded provinces, except that of superior strength, and a well disciplined army.

Many people exclaim against the injustice of this act, and doubtless with great reason. But after all, it will be a complaint against human nature, for all states do the same as often as they can. To judge of the conduct of states, and statesmen, we must consider the duties of mankind; I mean those rules by which it is generally allowed men ought to regulate their conduct in this world.—Compare it to a number of concentric circles, of which, self is the center. We agree that a man should consult his own interest first; then that of his children, relations, neighbours, fellow-citizens, and countrymen; then mankind in general; and lastly, all the animal creation.—Moralists may say, that all mankind should

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be treated as one family,—It ought to be so, but it never has, and most likely never will be so. Whatever may be morally right, it is nevertheless certain, that States, dealing with each other, do not consider themselves bound by the same rules as citizens to citizens, living under one Government. The actions of political men must be pronounced good or bad, according to their agreement or disagreement with those rules which other sovereign states think themselves obliged to follow.

Much has been written upon the law of nations, and a fine system of universal morality has been erected; but the misfortune is, that there is no earthly power to enforce those laws, and they are violated with impunity in this life every day.

Having shewn how Monfaram the grandfather, Bulwant Sing the father, and Cheyt Sing himself, came himself into the possession of Benares, &c. and also the manner in which the English acquired the lordship over him and his territorial possessions; I am now to inform you, that after the cession had been made for some short time, it became a matter of debate in the Supreme Council, how and in what manner the provinces should be governed.

Here I must observe, that Mr. Hastings, who at this time was generally in the minority, had opposed the demand of Benares from the Subahdar Asooph ul Dowla, upon the ground of its being a violation of a treaty made with his father Sujah Dowla. His arguments were strong, but not weighty enough to make his colleagues abandon their intention

tion. Failing in that, and thinking it his duty to mitigate acts of injustice which he could not prevent, he proposed to divide the rents of Benares, &c. between the Company and Subahdar, and to make it a kind of joint dependency on both. In this proposal, which was rejected, Mr. Hastings speaks of "freeing Cheyt Sing from the "remains of his "vassalage."

I must confess, I cannot comprehend how a man that was to pay rent to two landlords, and to be dependant on both jointly, could be said to be freed from his vassalage. This proposal was, as I said before, rejected; and it signifies very little to attempt a recapitulation of the terms. Mr. Hastings himself may throw a light upon this, notwithstanding my want of comprehension; but Mr. Burke, in a very ingenious manner, heaps together Mr. Hastings's arguments in opposition to the demand of the cession before it was made, his arguments in favour of a modification of the demand, and his arguments in support of the Company's right to an unqualified sovereignty over the provinces, when they were actually ceded, and apparently confutes Mr. Hastings by his own principles—that is, he shews a great contradiction.

But this contradiction will disappear, when examined by the rules I have laid down in the preceding part of this Letter. I there said, that right and wrong must be measured by some known rule, precept, or maxim, to which the disputants agree to refer it. Mr. Hastings first argued against the demand, upon the principle of its being a violation of

a treaty. He was over-ruled, and forced to abandon his principle, and consequently could argue no longer from that. He then argued for a modification of the demand, and an equal division of profits, on the principle of expediency. This also was over-ruled, and he was obliged to adopt a new principle, and consequently vary his arguments. Hence arise the contractions complained of. I dare say, Mr. Hastings retains his first opinion with regard to the moral rectitude of the demand: but it was useless to reason from a principle in his own mind which he could not impress on the minds of those who had the power of adopting or rejecting.

The force of these observations must be felt very strongly by every Cabinet Minister, and by every parliamentary leading Partizan in this kingdom. They often disagree in private about the rectitude and propriety of the measures they are to adopt in public; but when they have settled the plan among themselves, they all argue in support of it. Were the public in possession of the private opinions of every Cabinet Minister, and to compare them with their public declarations, there would appear a mass of confusion and absurdity, that would astonish and disgust the mind of every person who took the trouble to compare them.

When Mr. Hastings found himself beat in the arguments, or, I may say, over-ruled in the two motions he made on the subject of Benares, he was driven to adopt a new plan, and to consider Cheyt Sing, in the character in which he then stood, as a
vassal

vassal or dependant on the Company. Upon this principle, a *funud* or grant was made out in the name of Cheyt Sing, according to the usual form of such instruments. This *funud* seems to have made him a Zemindar; but he was a Zemindar of their own making. Cheyt Sing engaged to pay about 230,000*l.* annually, as a rent, not as a tribute. Mr. Burke uses these words synonymously, but they convey to me very different ideas. In the Persian, the words are very different. When we hear of a person paying tribute, we annex the idea of a sum of money paid annually by a weak Prince to a stronger, as the price of forbearance or protection; but when we hear of rent, we annex the idea of a compensation for the annual use of lands, belonging to the Lord who receives the rent. If Cheyt Sing was tributary, the lands were his own: if a renter, they belonged to the Company.—But I have shewn, that whatever he was, he was the creature of the Company in every instance. In their acquired (usurped you may call it) Sovereign capacity, the Company's servants restrained Sujah Dowla from exercising his usual authority over his vassal; they obliged him to receive Cheyt Sing, though not the legal successor to his father; and they obliged Alopul Dowla to transfer the provinces of Benares, and the vassalage of Cheyt Sing, to the Company. If it be asked, why did these servants of the Company interfere between a sovereign and his vassal? it can only be answered by a question—Why did the King of Prussia interfere between the Stadtholder

and the Dutch? Why did Mr. Pitt do the same? And why did the nation applaud such an illegal, though very necessary, and political interference? He thought it the interest of his King and Country, to whom he was responsible for his conduct. The Company's Servants thought the same. Were Mr. Pitt to be impeached for his conduct in the Dutch business, he would either be acquitted or condemned, according to the standard of justice by which he might be tried. If his accusers placed the criminality, in his acting contrary to the interest of his country, he would be acquitted with honour; but if they placed it in the breach of the law of nations, or acting contrary to the true interests of Holland, it would become a very doubtful question. This is precisely Mr. Hastings's case in this charge, and in the next that I shall treat of:—he is not accused of betraying the interest of his country; but he is accused of revoking or altering the conditions of the Company's grant to a Grantee, who gave nothing in return for it.—The obligation lay all on one side.

In addition to the powers Cheyt Sing had, when under the Subahdar, at the motion of Mr. Hastings he was invested with the administration of criminal justice, and the power of coining money.

This does not strike me as a politic measure; but though I can discover no good reason for increasing Cheyt Sing's power, doubtless the Supreme Council were satisfied with its propriety.

Three

Three years after this session had taken place, (1778) a rumour prevailed in India of a French War, and Mr. Hastings foreseeing a probable want of money, proposed to the Council, that Cheyt Sing should pay 50,000*l.* extra, by way of aid towards the charges of the war. It was agreed to, and the money was paid, but not without much evasive procrastination. The demand was renewed the second year, and the year following. Cheyt Sing did pay the whole, but his evasions, procrastinations, and excuses, provoked Mr. Hastings beyond the bounds of patience.

His delay in one instance endangered one of the Company's armies then on foreign service. To these several demands, Mr. Burke imputes much criminality.—For, says he, “why do yourself what “you would not suffer another to do?” This is unanswerable in Morality or Christianity; but in Politics, it cannot stand a moment. As a Christian, Mr. Burke argues well, not as a Politician. Had the Company instructed their Servants, in treating with the Natives, never to take any advantage of them, which they would not like to have taken against themselves, they would not have had one acre of land in Indostan. And were Mr. Pitt instructed to make the Golden Rule, *do unto others as you would that they should do unto you*, the guide of his political conduct, he would be but a sorry Minister.

Were Mr. Hastings tried for betraying the interest of his country, he would be acquitted of the charge

charge instantly; but the Charges against him are of that nature, as to render it extremely difficult to lay down any rule of justice by which we are to judge of his conduct. It is for this reason I have been very profuse in treating of the Constitution of Indostan, and in tracing step by step the acquired rights of Cheyt Sing, and in shewing that the conduct of Political Men cannot be tried by rules of Morality. Were Mr. Hastings tried by the customs of Indostan, I mean, if his conduct towards Cheyt Sing were compared with the treatment Vassals usually receive from their Superiors, it would be thought lenient, and not in the least repugnant to the customs of the Empire. In interdicting Sujah Dowla from demanding more than the stipulated annual rent from his Vassal, Mr. Hastings seems to have conformed to the practice of that Government to which he had recently succeeded; and in demanding from Cheyt Sing an extra aid in time of State Necessity, he was justified by a rule of right, or custom, acknowledged by Bulwant Sing, his father.

The instance I am going to adduce in support of this assertion, has been overlooked by both parties, or at least not drawn into argument by either: but it appears to me to throw such a light on the customs of the Indostan Government, that I shall digress a little to relate it.

In the year 1766, Sujah Dowla was hard pressed by the Company for the payment of a sum he then owed them. Being unable to raise the money him-
self

self he called upon his *dependant Zemindars*, and among the rest, upon Bulwant Sing, who contributed as his quota, three lacks of rupees, or 30,000l.—The next year Sujah Dowla repeated the demand; but as no extraordinary necessity existed then, as it did before, Bulwant Sing objected, and appealed to the British Government.

A deputation of three English gentlemen (Messrs. Cartier and Ruffel, and General Smith) were instructed to inquire, among other things, into the nature of the dispute; and if they found the disputed demand to be part of a *Nezeranah*, or stipulated pecuniary compliment settled in the year 1765, they were, according to instructions, to compel payment from Bulwant Sing; but if it proved to be an increase of rent, they were to inform Sujah Dowla, that the English Government was bound to prevent any infringement of the Treaty. Sujah Dowla informed the Commissioners that he meant it as an annual and additional *Nezeranah* like that which he had obtained the preceding year. In answer to this, Bulwant Sing replied, that the *Nezeranah*, or extraordinary payment of three lacks the preceding year, was made on account of the extraordinary occasion, namely, the necessity his superior was under of fulfilling his engagement to the Company; but as that necessity no longer existed, he ought to pay no more than the stipulated annual payment.—The arbitrators were satisfied with Bulwant Sing's answer, and would not suffer an extraordinary demand to be made without an extraordinary occasion to justify it.—Here you see Bulwant Sing acknowledges the right

right of his superior to demand an extra aid to relieve the pressing and immediate necessity, but objected to its being drawn into a precedent for an increase in his annual payments.

Had Cheyt Sing been deprived of his situation, without any offence or neglect of duty, he would not have been worse treated than Rustum Ally was by Seidler Jung, at the instigation of Cheyt Sing's Grandfather, Monseram.

Mr. Burke seems sensible that there is no way of fixing criminality on Mr. Hastings, except that of proving that his conduct was influenced more by motives of private revenge than of public service. To establish this opinion, he states that Mr. Hastings was offended with Cheyt Sing for the part he acted when a contest for the Chair took place between the former and General Clavering. This is one of those cases which are incapable of proof. On Mr. Burke's side it is suspicion; on Mr. Hastings's, positive denial. How is it possible to determine the real motives of any man's conduct? Circumstances may warrant conjecture, but in this case, circumstances would make against the suspicion.

General Clavering died in 1777, and no extra aid was demanded till 1778, and then not till a war was said to be broke out in Europe, and one was actually commenced against the Mahrattas in India.

I should have told you before, that during the second year of making a demand of an extra aid from Cheyt Sing, his evasive and refractory conduct obliged the Supreme Council to send two battalions

of sepoy's against him, the expence of which he paid, about 2000*l*. After that he offered through his agent, two lacks, or 20,000*l*. as a propitiation for his offence, which was accepted.

Upon the invasion of the Carnatic in 1780, the Supreme Council required of Cheyt Sing to furnish 2000 horse, which demand was lowered to half that number. He answered, that he had but 1300 horse, of which he could spare only 500, and that in lieu of the remainder, he would furnish 500 matchlock men. Matchlock men are a kind of musqueteers who fire with a match instead of flint: they are of some use to an army, but not much. His refusal, and neglect to comply with this requisition, irritated Mr. Hastings, already out of humour with his former evasions, so much, that he came to a resolution of fining him, for which purpose he set off in August 1781 for the town of Benares. To enable himself to act with vigour and dispatch, he procured from the Supreme Council a delegation of its full authority out of the Company's Provinces to himself. The fact was, the Supreme Council consisted only of two Members, Mr. Hastings and Mr. Wheeler. When together, the former was omnipotent; for having by Act of Parliament the casting vote when the Members divided equally upon a question, he could carry any point from his own authority alone. By this delegation of authority, Mr. Hastings was the Supreme Council beyond the Provinces, and Mr. Wheeler within them. Mr. Burke considers this division of power as criminal.

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I shall not waste time to consider this question, as the same thing happened again in 1784.

Previous to his departure, Mr. Hastings expressed to Mr. Wheler, and others, his intention of fining Cheyt Sing fifty lacks of rupees, about 500,000*l*. It does not appear that this threat was ever carried into effect, or that Cheyt Sing was ever informed of Mr. Hastings's intentions. When the latter arrived at Benares, he ordered the Rajah to be confined, and a guard of sepoy*s* was placed over him. In a few hours afterwards, an affray arose between the Rajah's people and the guard. The event was dreadful—more than 200 of the latter were killed, and as many wounded: three European officers were among the former number—Cheyt Sing was rescued, and a general insurrection broke out in the province of Benares. I shall not enter into the history of the war, but content myself with saying, that it ended with the total expulsion of Cheyt Sing. It is said, and I believe truly, that many offers, or solicitations, were made from the Rajah and his friends towards a reconciliation, but they were ineffectual; and indeed Mr. Hastings, by rejecting all offers from Cheyt Sing, seems to have conformed exactly to the opinion of the Court of Directors, and the King's Ministers, who wrote to Bengal, that after the massacre no countenance could be shewn Cheyt Sing, nor had they ever entertained an idea of restoring him.

There is an item of this Charge, which imports criminality to Mr. Hastings for giving away the
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Company's

Company's property in the plunder of Badgegur. In that fort Cheyt Sing had usually kept his treasure. He carried off all he could when he fled the country, and left his mother to defend the fort, which is by nature very strong, being built on a rock. Of this every man in India will readily acquit Mr. Hastings. No mathematical truth was ever impressed more deeply on my mind, than that Mr. Hastings never meant to give away any considerable part of the Company's property. Advantage was taken of an unguarded expression in a letter addressed to the Commanding Officer. Mr. Hastings there very loosely says, that he considers the property which might be found in the fort as the right of the captors. The fort was soon after taken, and the Commanding Officer thinking he could justify himself under the words of the letter, instantly divided the treasure, to the amount of near 300,000l. Mr. Hastings calls it a private letter; but in that I think him wrong: he could write no private mandatory letters in his then situation. He founds the distinction of private and public letters on the address; but this is too subtle and refined for military men. But the fact was, the expression was not in the nature of a command, but only declaratory of an opinion, which upon reconsideration might, and would have been altered. The Officers knew that, for had they been satisfied of their having a clear indisputable right, independent of Mr. Hastings's letter, they would not have been so hasty in the distribution. All the criminality that possibly can be

imputed to this, amounts to nothing more than advantage taken of inadvertency. Mr. Hastings tried to recover the divided treasure, and certainly in strict justice; if it was distributed under a mistake, it ought to have been restored. This is my private opinion, confirmed by the judgement of the Supreme Court of Judicature at Calcutta: but upon an appeal made from that Court to the Lords in Council, it was determined that Mr. Hastings's letter justified the division.

I have now gone through the principal parts of the *First* (or, as it is commonly called, the *Benares*) *Charge*, as far as relates to Cheyt Sing; but you are to observe, that the Administration of the Country, after his flight, is made criminal matter against Mr. Hastings, and furnishes several items of the latter part. Of those I shall speak briefly in my next letter, and shall conclude this with stating the principal points upon which the Charge, as far as I have gone, will probably turn. To make it more clear, I will give it in the air of dialogue.

The *First Question* is—In what relation did Cheyt Sing stand to the Company at the time an additional sum of five lacks, or 50,000l. was demanded of him?—According to my idea, a Zemindar of the Company's making.

Second Question.—What is a Zemindar, and what are his rights?—By the constitution of the Mogul empire in Indostan, a Zemindar was a landholder, deriving his title from a royal grant, and sometimes by a vice-royal grant, called in India a Sunud.

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Third Question.—Was such a grant revocable?—The same authority that gives can revoke, in the same manner as a legislature can repeal an act of its own making. The Emperors did it, the Subahdars did it; the Indostan histories abound with examples of it.

Fourth Question.—In what light does the Company stand in India, compared with the constitution of the empire?—As an usurping Subahdar, certainly, with respect to Benares, and I think the same with respect to the province of Bengal, for they have committed acts of forfeiture. If the King were in a situation to enforce his own rights, the provinces are out of the question; but as to Benares, it was a cession from one usurper to another.

Fifth Question.—What are the powers of the Supreme Council in Bengal?—The Company, under charter, have a right to hold lands, &c. and to exercise sovereignty in India. The Supreme Council are the delegates of the Company, the majority of whom I take to be acting Subahdar of all the Provinces they hold in the Mogul empire. I therefore consider the Council, with respect to the empire, in the same light as I do Asoph ul Dowla the Subahdar of Oude.

Sixth Question.—In making a demand upon Cheyt Sing, now considered as a Zemindar under the Subahdar of Bengal, for five lacks of rupees, upon the eve of a war, was it repugnant to the customs of the empire?—I do not know whether I am correct in calling the Company Subahdar of Bengal, for I think
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the King granted them the dewanay or revenue only; but in spirit, if not in letter, they are the Subahdar, for the revenue and army are both in the power of the Company. But to answer the question, I say it was not repugnant to the customs of the empire.

Seventh Question.—Is it customary for the Subahdars to call on their Zemindars to furnish troops in time of war?—That is the mode in which such large armies as we read of in their histories, are so soon collected. I have noticed many of these circular mandates,

Eighth Question.—How were the Zemindars treated who disobeyed these orders?—It is the common policy of Indian Chiefs, if they think their Lord Paramount is in danger of being defeated, and of losing dominion, to collect their troops and to stand neuter. If the event proved favourable to the latter, they made the best apology they could. Sometimes the offended master would deprive them of their tenures, and at other times accept a pecuniary compensation.

Ninth Question.—In fining, or rather in intending to fine Cheyt Sing, for not furnishing the required number of troops, and for evading, as much as he could, the payment of the extra demand, did Mr. HASTINGS act according to the customs of Indostan?—Not exactly. Mr. HASTINGS relied upon the awe which the British name strikes into the mind of a native of India, and went with a very small force, whereas a native Subahdar would have marched against his vassal, taken him prisoner, and per-

perhaps never have re-instated him; or perhaps he might have accepted a pecuniary compensation.—

The punishment would have been discretionary, and the weight of it would have been more or less, according to the natural disposition of the Master, and the pressure of circumstances.

The questions hitherto, concern the customs and laws of Indostan; and the answers, I can say with great confidence, are such as every man who ever was in India, and enabled to read their histories, must subscribe to.

Question.—Wherein does the difference consist, in this statement of Cheyt Sing's situation, and that of the Managers?—They consider him as a tributary Prince, and that when a Sovereign has entered into a treaty with his Tributary for a certain sum of money, and that is actually and regularly paid, he cannot demand more, without a violation of the treaty, and loss of honour. I consider him as a subject holding lands under his Sovereign's grant, revocable at pleasure, or liable to alteration. I have shewn that Cheyt Sing's grandfather obtained the province of Benares, as an act of favour Seder from Jung, and that Rustum Ally was turned out of the same office with little ceremony, and less credit to his successor. I have shewn also how Bulwant Sing, and his son Cheyt Sing, became possessed of the provinces, in which there are certainly no marks of Princely power or authority. If Cheyt Sing is to be considered as a subject to the Subahdar of Bengal, or to the Company (and I am sure no evidence given at the bar, nor

nor any arguments from the Managers, have impressed my mind with a contrary notion) I shall then shew that he could have no pretence to refuse the payment of five lacks of rupees, nor to withhold his troops from the service of the state to which he was subject.

In every Sovereign State (by which I mean a state that is not under the legislature of another) there must exist a legislature, or a legislative power; I think this is so evident that I need not argue upon it. The legislative power in a Sovereign State, may be in the hands of one man, or in the hands of an indefinite number: if in one man, we call it an absolute monarchy, or despotic government; if in the hands of many, it may be a limited monarchy, like ours, an aristocracy or democracy. Now I say, there is no state where the subject has any allowed right against the legislature, whether in the breast of one man or many. To exemplify this, though the King cannot deprive me of my property, nor compel my services beyond what is already fixed for me, yet the legislature can increase the tax upon my lands, so much as to make it not worth my holding; it may take them away for public uses; it may compel my personal services; in short, it may do any thing.

Blackstone speaks of the omnipotence of the legislature over all rights. I do not mean to deny the natural rights, of mankind, because whenever a legislature becomes too oppressive, the people will and do rebel, and then every thing goes back to first prin-

principles. But what I mean is, that as long as people agree to submit to the laws in being, and to acknowledge a legislative power, the allowed or ascertained rights of the people are nothing that I know of; for if neither my person nor property are out of the controul and disposal of the legislature, I see nothing that I can call unalienably my own.

In India there is no Parliament to make laws; there is no Magna Charta to define the rights of the people; there are no law books to define the prerogative of the King. The King has now, as far as his dominion extends, all the executive power of his Majesty King George, and all the legislative powers of the Three Estates of this kingdom.

Here I wish you to stop for a minute, and to consider the power of our legislature:—What is it they cannot do, and what have they not done?—They make laws and repeal laws; they make things positively criminal, which are not naturally so; they punish by impeachment and attainder, offences against the state, not by any known rule of punishment, but according to their own discretion. When money is wanted, they levy it on the subjects, in which the majority of legislators exercise their own judgements.—The Emperor of Indostan having all these powers in his own hands, is just as absolute and discretionary as our legislature, but not more so.

We certainly have less to fear from the caprice or injustice of a divided legislature, than from that which exists in the breast of one man. In this con-

sists all the difference. But to what are we indebted for this very valuable difference? To the chance of war. Our ancestors struggled with tyranny, and were successful; they have with wonderful wisdom and sagacity secured the constitution against the tyranny of one man; but it is not yet done against the tyranny of many. I do not mean to insinuate, that any legislature is, or ever was tyrannical; but that if the majority of both Houses, with the concurrence of the King, were inclined to bear hard upon an individual, I do not see how it can be prevented.

The Indian Chiefs have also struggled for liberty, but they were not successful, consequently they are under the dominion of one man, instead of being under the dominion of many. This self-concentrated power, which the Great Mogul, or Emperor of Indostan used to exercise in a very great extent, and now in a small one, his Subahdars, now exercise over their respective jurisdictions. Whether they have just right to such power, is foreign to the present question; but such they have and make use of on all occasions. Such is the power which the Company's servants, in quality of Subahdar, or Administrators of the Government of Bengal, have, and must exercise for the good and benefit of their masters, and the people under their command. In time of war and general necessity, they must make as free with the property of individuals as the legislature does here. If the Company's servants were executive only, and had a Parliament to refer to, it would be otherwise; but being both executive and legislative,

live, there can be no private property in the Company's provinces exempt, when wanted from the public service. If there be any such, the possessor is in a better situation than any man in this kingdom.

Here seems to be the rock upon which Mr. Burke originally foundered. He considered a grant made to a subject by an administration possessed of legislative and executive powers, equally binding with a treaty made between two independent states, or between a Sovereign and his Tributary. There can be no treaty between a legislature and a subject. A legislature cannot bind itself; if it could, it would do away its own powers, and cease to be a legislature. If it be denied, that the Company's servants have a legislative, or which is the same thing, a discretionary power over the inhabitants of their own provinces, I would ask who has it? Somebody must have it. — It cannot be exercised by the King of Great Britain, for he has done it away for a time by charter: it cannot be in the direction, because they have delegated all they had to the Supreme Council; nor can it be in our Parliament, because they have also delegated all they had to the Supreme Council; I do not mean to say, that these delegates are not answerable to the Company and to Parliament for their conduct: they most assuredly are answerable for every abuse of authority. But I mean, that as long as they remain in the administration, they must necessarily exercise over the natives of the provinces, the same powers which the legislature here exercises over the

subjects in this kingdom : they must make laws and regulations as occasions demand them : they are at too great a distance to consult the treasury board, or the Court of Directors ; they must act immediately or not at all. I consider the Supreme Council to stand much in the same relation to the Company their masters, as the Subahdars did to the Emperor when the empire was in a flourishing state ; they were entrusted with absolute powers, but they durst not abuse them.

I may here be asked, how and by what rule of right and wrong ought Mr. Hastings to be tried ? I answer, in the same manner as he would have been tried under Akbar, had he been a Subahdar in those days. That Emperor would have listened to no subtle distinctions between tribute and rent ; to no contradictions in minutes of Council at different consultations : he would have made the *lex rationis* his guide : he would have said, Has my delegate used the power I entrusted to him for the service of the state, or has he been cruel and oppressive to the subjects I put under his command ? Has he treated a refractory Zemindar worse than my other Subahdars, or I myself should have done on the like occasion ? He would have considered the customs of the empire, and necessity of the case.

I have frequently heard it alledged against Mr. Hastings, that the demand from Cheyt Sing was partial and unjust ; and that in cases of state necessity, every Zemindar under the English Government should have contributed alike ; but this objection vanishes, when it is recollected that Cheyt Sing held

his Zemindary very different from any other. His annual collection was near fifty lacks, out of which he paid the Company only twenty-three and a half lacks, so that he had a balance of twenty-six lacks of rupees to support his troops and household; whereas, no exertion whatever could have increased the revenues of Bengal and Bahar: they were already strained as far as they would bear, and in some cases, beyond.

No Mogul Emperor would have considered a Zemindar holding under a Subahdar's Sunud, as an independent Prince, or as a Tributary, I should like to hear Mr. Fox take up this side of the argument. No man can entertain a higher opinion of that gentleman's talents than I do; but I often suspect, that what he wishes to impress on the public, is not deeply impressed on himself. He seems to act and speak, as if he thought right and wrong nothing more than light and shade, and that by a skilful distribution of colours, he may convert one into the other at pleasure. Were I upon terms of intimacy with Mr. Fox, I should like to ask him, as a friend, what Mr. Hastings ought to have done, and to put the following questions for his candid answers:

Ought money to be raised for the public service, or not?

In India, where the wealthy draw all their riches from the poor to support themselves in luxury, and to make good their payments to the Government, ought any extra demand for money, in time of war, to fall on the rich or not?

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As there is no Parliament in India, in whom did the power of assessing taxes, &c. rest? Was it in the Supreme Council, or where did it lie?

As Mr. Hastings could not borrow on bond, nor draw on the Company, being prohibited by Parliament, what should he have done to raise money?

In all I have said respecting legislation in India, I do not mean spiritual law, nor the laws of property between individuals, for these are out of the present question; I mean the rights of the people with respect to the state; and I think I have abundantly shown, that no private property is, can, or ought to be secure, when the state stands in need of it. In the best regulated states, individuals are suffered to hold property only upon these conditions—that they must give up a part, or the whole, whenever the whole society calls for it.

Before I quit this subject, I cannot avoid making a few remarks upon the nature of state criminality.—Mr. Pitt held Mr. Hastings justifiable for making the extraordinary demand of five lacks, or 50,000*l.* and argued it much on the same principles I have done; but he condemned him for the intended fine. Surely Mr. Pitt did not consider, that an unexecuted intention, except it concerned the life of Majesty, was never held criminal by any laws in this world. The fine proposed was large, but not more than Cheyr Sing was well able to pay, as the event demonstrated. Add to this, the fine was to relieve the distresses of Government, then almost at

the verge of bankruptcy.

its last gasp: so that if the intention had its demerit on one side, it had its balance of merit on the other.

The disagreement of opinion with respect to the criminal points of Mr. Hastings's conduct, between the two leaders of the House of Commons, Mr. Fox and Mr. Pitt, has frequently brought to my mind some very ingenious arguments I formerly read in an Oriental manuscript, where the author proves, or attempts to prove, that right and wrong are mere ideas, or creatures of imagination.

Much pains have been taken to prove inconsistency in Mr. Hastings's opinion, delivered at different times.—The Council were perpetually making and rescinding resolutions, all the time I was in India, both in the civil and military establishments.—A person who had seen them at a distance, would have considered the conduct of the Supreme Council as a course of experiments for the discovery of knowledge. But when we consider the jarring interests of the members of that Council, that the balance or casting vote was perpetually shifting from one side to the other, that the Governor General had his own friends to keep steady, and to provide arguments to meet the objections of his opponents upon almost every question, we cannot be surprised at the most glaring contradictions.—I do not say that such are to be imputed to Mr. Hastings; but I do not see how it was possible for him to be exempt from them.—A Governor could never be assured of carrying into effect any resolution that passed; for it frequently happened, that the absence or death of
a mem-

a member gave a sudden turn to the balance, and new measures were immediately adopted.

It would not be difficult to trace this very affair of Cheyt Sing up to the same source. For I am strongly inclined to believe he never would have disputed the demands of Government, either for money or troops, had he not known the dissensions which prevailed in council, and buoyed himself up with the hopes of seeing a change in administration favourable to himself. Whenever power is wanting to effect any plan or scheme, recourse must be had to artifice, or it must be abandoned altogether. Mr. Hastings never had power enough, except for a short time, when Mr. Wheler and he were alone in council to effect any thing of himself. He was therefore obliged to do a number of things to secure the votes of his colleagues, which he would not have done if he had had the powers since granted to Lord Cornwallis.

But the same contradiction is apparent in our ministers, and in our legislature.—In the former, measures change with men; and in the latter, we see laws made one session, and repealed the next. If there were any power upon earth able to arraign the conduct of any legislature in the universe, it would not probably pass without censure. But when we talk of contradictions in the minutes of Mr. Hastings and his colleagues, what shall we say to one of the honourable Managers, who formerly defended the Governor General's conduct at Benares, and is now his accuser on the same article?—I do not know how that Gentleman would reconcile his two parts to each other;

other: but were he to say, that in the first instance he was deceived, he would still be open to censure for temerity, in attempting to influence others upon a subject of which he was himself ignorant. He cannot cover his head and his heart by the same shield.

I shall conclude with cautioning you, and any one who may read these Letters, against mistaking my meaning, when I spoke in a former part of this Letter concerning arbitrary power. This I do, because Mr. Fox seems to have mistaken Mr. Hastings's meaning in a like expression.

I will exemplify and explain my ideas by calling your attention to the dictatorial powers granted to an individual by Rome, when a republic. The Dictator was made absolute for a time, and armed with discretionary powers. His instructions were expressed in one sentence—*Ne quid detrimenti respublica capiat*. Mr. Hastings might perhaps say, that these powers were arbitrary. Mr. Burke would say they were discretionary only. The latter is the most correct, but they both mean the same.—They both mean, that a person armed with these powers may and must act from his own judgement, without consulting any other.

If the Dictator acted properly it was a happy thing for the republic, but it depended on the senate, at the expiration of his office, to pronounce whether he had made a discreet and just use of his authority, or an arbitrary and oppressive use of it. But certain it is, that the Romans confiding in

the wisdom of an individual, intrusted the Dictator with absolute authority; but they never could be certain whether wisdom and justice, or caprice and oppression, would influence the will and conduct of this unlimited trustee for the public. You will, from what I have said, understand, that when I mention arbitrary power, I mean dictatorial, or such as Rome conferred on her Dictators.

Such I take to have been Mr. Hastings's meaning; but if I remember right, the defence of the Benares Charge, against which Mr. Fox inveighed so much, on account of this unguarded expression concerning arbitrary power, was not penned by Mr. Hastings himself. The charges were so numerous, and the time for replying so short, that Mr. Hastings's friend undertook part of the task for him; and I am almost certain, that this had been publicly mentioned by Major Scott in the House of Commons in 1787, and this particular answer was afterwards proved by evidence in Westminster Hall, to have been written by a Gentleman whom I have the honour of being acquainted with. Mr. Hastings, therefore, does not hold himself responsible for it; but any person might justify it, by giving a proper explanation. The Gentleman never meant that Mr. Hastings was possessed of that kind of arbitrary power which a man possesses over his sheep, which he may kill, give away, or sell; but, that having no person to consult, he must act from his own judgement, and that Mr. Hastings must answer for the just and discreet use of that absolute authority with

with which he was invested, to those from whom he received it. To this explanation I dare say Mr. Fox will subscribe. I shewed to a demonstration, that there must be in all states an absolute and discretionary power lodged somewhere; that it was often divided, and sometimes necessarily vested in one man.

In England, the executive and legislative powers are on the spot, and the former can consult the latter in a few days, yet there have been emergencies so pressing as to induce the former to assume a discretionary power which was not granted by the latter. Such was the Proclamation for stopping the Exportation of Wheat, in Lord Chatham's administration. I could quote other instances, but it is unnecessary. It is, however, usual to pass a Bill of Indemnity by way of preventing its being drawn into a precedent. But this cannot apply to India, for there the Board, in their delegated capacity, must act upon every occasion, to which no rule or written order can be applied, from their own judgement and discretion, accountable, as I said before, to their superiors, and bound to prove that their conduct was guided not by caprice or whim or personal gratification, but by considerations of public benefit.

From what I have said, the true questions in Mr. Hastings's case are—Did he use his authority, to the best of his judgement, for the good of his country, or for selfish and interested purposes? It is the intention only that can constitute criminality,

and of the intention people must judge from a comparative view of all the circumstances.

When the Rebellion in Benares was extinguished, and Cheyt Sing totally expelled, Mr. Hastings, in settling the country, appointed Rajah Mehepnarain, the next in lineal descent from Bulwant Sing, to the government of Benares, the administration of which was committed, under the inspection of Mr. Markham, to his father Durbedgy Sing. The rent, which in Cheyt Sing's time was 23 lacks, or about 230,000l. was now raised to 40 lacks or 400,000l. There was some alteration made in the mercantile duties, and there were some pensions granted to a few native individuals, who, in the opinion of Mr. Hastings, were deserving of such favours, as a recompence for their services in assisting to suppress the Rebellion.

I do not see much contradiction in Mr. Burke's and Mr. Hastings's account of this transaction, nor do I clearly understand which are the criminal points on which it turns. It may be for granting the pensions, but the Supreme Council afterwards gave the measure their approbation. There are items or allegations which seem to imply or impute criminality to Mr. Hastings for letting the lands at too high a rate; but I cannot suppose that what is esteemed a virtue in a steward for an individual can be thought criminal in a steward for the public.

The increased revenue has continued ever since the year after the expulsion of Cheyt Sing.

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The Supreme Council, upon a representation by Mr. Markham, then Resident at Benares, that Durbedgy Sing, through misconduct, had failed in the stipulated payments, ordered him to be deprived of his office and imprisoned. A Jaghire, which had been allowed him for the support of his office and station, was also taken from him and re-annexed to the revenue.

The principal point in dispute here is, whether these were the acts of Mr. Hastings alone or of the Board conjointly; but whether they were the acts of one or the other, the measure appears to have been thought necessary, and the Board confirmed it. In exculpation of Durbedgy Sing, his son Mehepnarain and the widow of Bulwant Sing endeavoured to lay the blame on Mr. Markham; but as the one was a weak woman, and the other, from youth and want of cultivation, incapable of business, it seems Mr. Hastings paid little attention to what they wrote. This also is made matter of charge, and so is the conferring of the administration of Benares on Jagger Deo, who succeeded Durbedgy Sing. The latter proved to be very unfit for the office, and was, on account of misconduct in distressing the natives, afterwards dismissed by the Board at the repeated solicitation of Mr. Hastings. All the iniquities of this man are by Mr. Burke imputed to Mr. Hastings; but it proves in this case as in that of Deby Sing, that Mr. Hastings was of all others the most zealous to bring him to punishment.

The

The *Benares Article* concludes with stating, that the *Province of Benares* is desolate and ruined, and that all the mischief originated from Mr. Hastings's misconduct.

I should have added, that Durbedgy Sing died while in confinement; and it was insinuated by one of the Managers, that his death was owing to duress and poverty. It appeared, however, in evidence, that his duress was continued after Mr. Hastings's resignation, and that he died of disease contracted before his imprisonment.

I have now explained the principal points of this article; not all, for the allegations are very numerous and minute, and make it matter of criminality that Mr. Hastings gave credit to an unauthenticated piece of intelligence received over land respecting the French war. By *unauthenticated* Mr. Burke means, not coming through an official channel, such as the Court of Directors or Secretary of State.

The intelligence on which Mr. Hastings and the Council acted was transmitted over land from Cairo by a Mr. Baldwin, the Company's Agent or Resident in that city. It was also attested by eight other gentlemen at the same place. Chandernagore was taken from the French in a few days after the account arrived, and it was upon the credit given to Mr. Baldwin's information, that the first aid of five lacks was demanded of Cheyt Sing. It was well known in India at the time, or soon after Chandernagore was taken, that it was done without official intel-

intelligence, but it was universally thought a very laudable and spirited undertaking.

You see how difficult it is to avoid the imputation of criminality, and with what wonderful risk every Governor acts, who in pressing emergencies obeys the calls of duty in opposition to those prudential cautions which are necessary to guard his conduct against legal censure. Occasions are perpetually rising, which call for instantaneous decision and execution: there is no time to consult the opinions of those who are ultimately to judge of the propriety of the action. Afterwards, when an inquiry takes place, the rectitude or criminality depends not on the fact itself, but on the construction that may be put on it; and that construction will vary according to the degree of knowledge and understanding of every one who is to pass an opinion upon it. No man can judge of any situation he has not seen. Were Mr. Burke sent out Governor-general to India, fettered as Mr. Hastings was, he would soon say as he did once before, that what he thought demonstrable in theory, was not reducible to practice; he would say there were difficulties discovered at a nearer view, that were imperceptible at a distance; he would no longer say, that India could be governed by the laws of Great Britain. I have often heard it asserted, that Mr. Burke made a declaration of that kind in one of his public declamations; but there appears to me such a glaring absurdity in the proposition, that I am more inclined

to

to believe that it has been imputed to him by his enemies than that he ever said it.

I shall take leave of this charge with a few observations, which may appear to be rather out of place; but I have reserved them for the end, and for this reason—the whole weight of this charge rests upon the unjust expulsion of a man sometimes called a Zemindar, sometimes a Tributary, sometimes a Prince, and at other times an Independent Sovereign. Now mark with what kind of argument his title is supported:—at the time the Supreme Council, then very much divided among themselves, were consulting what privileges they should grant Cheyt Sing, a number of minutes were given in to the Board by Mr. Hastings and his colleagues, some of them apparently contradictory, and some I think impolitic. At length, however, a Sunud and Pottah were made out: the one is a kind of charter, and the other declares the terms and conditions.

These Cheyt Sing received, and in return gave a Cubboleet, or a kind of promissory deed, to execute the terms imposed on him. Now, one would suppose, that if Cheyt Sing had afterwards had a dispute with the Council, and there had been any tribunal to decide between them, he would have taken his Sunud and Pottah in his hand, and said—
 “This is my title; these are the conditions of my tenure: I am just what these deeds make me.—
 This is the custom here in England, when the King's Grant comes in question. The Judges look at the deed

deed or patent, and judge of the claimant's rights from that. But the Managers, in supporting the Rajah's right to sovereignty, instead of saying to the Lords—"Look at the Sunud and Pottah, let the Clerk read them;" say—"Read Mr. Hastings's minute of this day, and his minute of that—See what he thought of the Rajah's situation."

This method of construing the nature of the Rajah's tenure is just the same as it would be, if the French King were to dispute the Commercial Treaty, and in order to make his construction good, to quote what one Cabinet Minister said, or what another might say, at the time of making it. What would Mr. Pitt say to that? He would tell the French King—"As to what passed among ourselves, is out of the question: there is the treaty—We must abide by the letter and spirit of it, not by our debates and consultations." This is precisely the case with Cheyt Sing's title to sovereignty:—it is not to be found in the deed; it is to be found only in the recorded consultations of the Supreme Council, and there only by a forced construction.

If the Managers quoted these opinions to shew their contradiction, it is very well; but if they are set up to support Cheyt Sing's title to sovereignty, it cannot stand for a moment. The Sunud makes him Zemindar, Aumeen, and Fougdar; that is, it vests him with a power to collect the Revenues, and to maintain the peace of the country, without the least hint at sovereignty. There are no words of perpetuity, nor any which convey a tenure for life or

term of years: it is barely a confirmation of the Zemindary. The Sunud is drawn according to the usual form of these instruments, and no man can read one of them with attention, without drawing this conclusion—that it was intended by the grantor to be *durante bene placito*, and no longer.

It is true, Mr. Fox carries his argument farther back, and says, that Sujah Dowla made the grant perpetual between his own heirs and the heirs of Cheyt Sing; promising and swearing by the Goran, that no increase should ever be demanded beyond what was expressed in the deed of agreement; and that this grant bound Asoph ul Dowla and the Company also. He adds also, that Asoph ul Dowla could not transfer a greater or more extensive right than he himself possessed. This last part is indubitably true, but the fallacy lies here—Sujah Dowla could not grant a title or right to Cheyt Sing, as Zemindar, which he did not possess himself, as Subahdar; for as Subahdar he had, according to the constitution of the empire, only a life tenure, or in fact, only during the King's pleasure. And if we consider him as a sovereign, independent of the Emperor's controul, it is the same; for no independent Sovereign possessed of legislative powers can grant a subject any charter which his successor may not take away. Search the whole history of the world, and shew, if you can, an instance of the contrary.

But to illustrate this, I will suppose Mr. Fox as advocate for Cheyt Sing, pleading his right before the Subahdar Asoph ul Dowla.

I claim

I claim the Zemindary of Benares in behalf of my client, under this deed which your father granted.—

“By the word of God, this agreement is made between me and my heirs, and you and your heirs, and it shall never be deviated from. You see it is perpetual.”

Asoph ul Dowla would reply thus—“In the first place, it was an extorted agreement, by the interference of your English protectors; but I shall not avail myself of that. My grandfather and father were Subahdars of Oude; they exercised sovereign power, and I do the same: they were usurpers, it is true, and so am I. The family of Timur are the same, and the difference of their claim and mine is, only in the length of time: they have been on the throne more than three hundred years—we have been sovereigns only fifty, or thereabouts. The balance of prescription is against us, but the power is with us. In my person, as Sovereign of this Subahdary, are vested all the powers of your King and Parliament; that is, I am sole legislator. My father was the same in his day; but you know that no legislature can bind itself, and that no King or legislature can grant immunities to a subject, which the succeeding one cannot take away: you must know that from the history of your own country. Remember your legislature stripped the church of all its lands; it has altered the succession of the Crown; there is no act, however arbitrary, that your legislature has not done at one time or other. Now, Sir, I say, that my father, as Subahdar and Legislator

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of

of Oude, could not bind me any stronger, than the legislature in the reign of George the First can bind the legislature of George the Third.

“ But of all men in this world, you are the last that I should have expected this argument from :— you who contended that the legislature of Great Britain was competent to the annulling of a charter granted to the East India Company for a term of years, in as solemn a manner at least as my father granted the Zemindary to Cheyt Sing. You had not patience to wait the expiration of a few years ; but as far as lay in your power, broke through the most solemn engagements. Now, if you thought that you, as a Minister of Great Britain, could, with the consent of Parliament, take away the charter from the Company, why could not I, as a Legislator and Sovereign of Oude, take away the charter my father gave to Cheyt Sing ? If you say that I am not Legislator of Oude and its appendages, tell me who is. I have no Parliament ; I am myself both King and Parliament ; but if you say that the Emperor is the Legislator, it will serve your argument no better, for then my father could not do away rights which belonged to the Crown : he was only Subahdar for life at farthest, and could grant no perpetuities.—Besides, our law is abhorrent of perpetuities ; yours is the same ; you allow private gentlemen to entail their estates only to a certain number of descendants ; and as to the succession of your Crown, you make it perpetual by Act of Parliament ; but you every now and then bring in a bill

bill to correct, explain, or modify the former act, or to clog it with some new conditions. *but signed only to*
 “ You mistake, Mr. Fox; I hold all my possessions by the same tenure as my father did.—You have fallen into an error, by considering me as a limited monarch, whereas I am no more limited than your Three Estates are.

“ I have ceded my rights in Cheyt Sing's Zemindary to the Company, not with free will, I confess; but I have done it to avoid a rupture. But in transferring these provinces to the Company, I give them over perfectly free, not as a sovereign to his servant, subject to rent and obedience, but as one sovereign gives over an island or country to another.—Afterwards, it is in the breast of a new Master to make what conditions he pleases.”

The Managers are sensible that they could not support Cheyt Sing's title by the laws and customs of the empire, and therefore they over and over again call the attention of the Court to Mr. Hastings's minutes, and the resolutions of Council. But surely the Board could annul their own resolutions; nor could Cheyt Sing support his claim on resolutions never communicated to him. He must have recourse to his Sunud and nothing else.—There are no words of perpetuity in it, nor a single expression that looks like a treaty between two sovereigns.—It is couched in the stile of a Lord to his servant. If the Managers say that Mr. Hastings, in some of his minutes, reasoned ill, I should join with them; but these contradictions and variations arose, as I said
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before, from the dissensions among the members of the council, and from the change of circumstances, which unavoidably drove them to the dereliction of old principles, and to the adoption of new.

In my next Letter I shall treat of the Second Charge, viz. the Begums of Oude.

L. E. T.

[72]

LETTER III.

SECOND ARTICLE *of the* IMPEACHMENT.

THE

BEGUMS OF OUDE.

I AM now going to state the principal points at issue between the accusers and accused, on the Second Article of Impeachment, namely, the *Begums of Oude*.—*Begum*, in the Persian, signifies *Queen*; but it is a title in India given to ladies of very high rank, who are not of royal parentage. Such are the Begums of Oude. When the Nabob Sujah Dowla, of whom I said so much in my former Letters, died in the year 1775, his Subahdary descended to his son Afoph ul Dowla. He left behind him a widow, whom I shall distinguish, to avoid obscurity, by the appellation of the *younger Begum*. He left also a mother living, who was the widow of Sefder Jung, whom I formerly spoke of as being the first Subahdar of his family in possession of Oude.

It was the custom of Sujah Dowla, as it is of many men in the East, to deposit their treasures in the Zenana.---Zenana is a Persian word, signifying much the same as Seraglio, and is the place where the

women are lodged. It is by people of rank held very sacred, and no person of the male sex is permitted to enter it, except such as are very nearly related. They have rules for regulating these exceptions; and those who are allowed to see the women, such as brothers, &c. are called *Mebrem*.

Some months after the death of Sujah Dowla, his son Asoph ul Dowla turned his attention to the treasures of his father.

Mr. Britton, who was then Resident at Lucknow, in a letter to the Supreme Council, states these treasures to amount to near two million sterling; but he says, that report made them more than double that sum. There are two points of view in which the deposit may be considered: had it been a case between private individuals, the Coran would have decided it, and the mother, if without a settled dower, and all her issue, would have had their respective shares, as settled by that book; but as Asoph ul Dowla was a sovereign, or at least in the exercise of sovereign power, the treasures were generally considered as the property of the State.

I am of opinion, that in law, the Begum's Jaghire would have been considered as a proportional dower, and that she would have had no share of the treasure in any event.

This is my idea at present, as far as I could collect from a small Arabic Treatise on the Mahomedan Law, now in my possession. There is also a large work now in the press, translated by Mr. Hamilton and Mr. Anderson, from an Arabic manuscript, called

Hedaya,

Hedaya, which contains a much fuller explanation of the laws respecting dowers, &c. than is to be found in the book above-mentioned. As this book will soon be published, it may be referred to; and it is to be lamented, that it has not been translated long since, as it would have saved those gentlemen who inquire into India matters from much error.

I remember having read in the *Hedaya*, that where the wife's dower is not settled at the time of marriage, they are guided by the customs of her husband's family; thence I conclude also, that the Jaghire would have been considered as a proportional dower. I shall not argue the point of right, which is so indefinite, particularly in this case, where it may be considered in a private or public light, though much will depend on the opinion which the Lords may entertain on this question: for if the treasure left by Sujah Dowla in the custody of his widow, were by political law the right of the succeeding Sovereign, or the legal property of his son, by the laws of the *Coran*, I do not see how the Begum could think herself much injured, let the resumption take place when it would.

I must here digress for a minute, to take notice of something I heard from Mr. Sheridan.—He reprobated the idea of right founded on either of these grounds I have stated; and to maintain his argument, he told the Court, that the security of a Zenana is the title of a saint to the relics on an altar, placed there by piety, guarded by holy superstition, and to be snatched from thence only by sacrilege.—

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The inference he draws is, that because the *Zenana* is sacred, the treasure was the Begum's own.

Whether Mr. Sheridan meant this as a beautiful period, or whether he was ignorant himself, I cannot say; I should rather suppose the latter; but certain it is, that the son, Asaph ul Dowla, was no more interdicted by law from entering the *Zenana* than his father; and, consequently, the treasures were no more protected against the former than the latter. By the laws of the *Zenana*, the son was a *Mehrem*, as I stated before. It may assume the appearance of pedantry, but it is necessary to observe, that *Haram* in Arabic, means nearly the same as *Zenana* in Persian; and *Mehrem*, being a participle of the same root, signifies a person prohibited in marriage, and consequently admissible into the *Zenana*.

In the book I before quoted, or in some other one in my possession, there is a chapter describing the degrees of consanguinity, which fall within the circle of *Mehrem*. It is for this reason that the Mahomedan law makes a wide distinction between a man's taking by force or stealth a sum of money from his parents, and from those that are not related to him. In the latter case, it would be felony, if I may apply that term to Mahomedan law; but not in the former. The principle of this distinction must be, that no property can be illegally taken by him who has by consanguinity a right to enter the *Zenana*. Neither did the natives in India, at the time of seizing the Begum's treasure, consider it in the same light it has been con-

sidered

sidered here, that is, as far as I understood from those with whom I conversed on the subject.

Mr. Sheridan says, the arguments of Mr. Hastings's Counsel were futile and frivolous. I do not know how they argued the point, not being in Court that day; neither am I much acquainted with either of those gentlemen; but I can from my own knowledge take upon me to say, that Mr. Sheridan's arguments on this head cannot stand one moment before any person who has the slightest knowledge of the Mahommedan customs. To say that the *mother* acquired, and that the *son* lost, a right to the treasure from its being deposited in the *Zenana*, is the strangest idea that ever was started. Were I disposed to animadvert on that gentleman's speech, there would be much room for it in that part where he tells the Lords, that they must not argue from the Turkish Mahommedans, they being of a mean and degenerate race. He was aware of there being no law or custom in Turkey that would warrant his *Zenana* doctrine, and he therefore made a new species of Mahommedans for India. It is, however, very foreign to my purpose to point out the false conclusions in that gentleman's oration. There are counsel for that business, and they will find no want of matter.

I have heard, Mr. Sheridan purposes publishing that Speech he made in the House of Commons, and which produced this Impeachment. Were I in the list of his friends, I would advise him to imitate the wisdom of the *Grand Lama*, who deriving all his consequence from seclusion, keeps his person from

public view. I have heard the *Mulnabi* read chapters of the *Coran* in such tone and accent, that I have been wonderfully struck with its seeming sublimity; but when I read the same words with an eye to their sense, I found it to be mere trash. Mahommed foresaw that it would suffer by translation, and forbade the *Coran* being translated. Mr. Sheridan may lose by publication; and he cannot add to his fame, though he may to his fortune.

I will now return to the subject from which I have strayed almost imperceptibly to myself.

Mr. Hastings considers the treasure lodged in the *Zenana* to have been the property of the State; but what his reasons for that opinion are, I do not know. He may say, that being assessed and levied on the public for public uses, they ought not to be employed for private purposes; and thereby drive the successor to levy new taxes on his subjects to supply the exigencies of State, which would not have existed, had the collections been turned to their proper or intended use. The King of Prussia seems to have entertained a similar opinion, when he told his successor, that the wealth which he had amassed was the property of the Public, and not of himself. Mr. Hastings will probably bring stronger reasons than those I have suggested, to support his opinion, that the *mother* acted unjustly in withholding the treasure from her son.

In the latter end of 1775, the Nabob being much straitened for money, requested the interference or mediation of the Resident, Mr. Bristow, who accordingly undertook it, without any instructions from the

the Supreme Council. The result was, that he prevailed on the lady to give up 30 lacks, or 300,000*l.* in cash and valuables, and to cancel an obligation for 26 lacks of rupees, which she had lent her son on a former occasion. This was all that could be obtained, without proceeding to violence; and in order to obtain even this, Mr. Bristow was obliged, in the Company's name, to guarantee her in the possession of the remainder of the deposited treasures, and also of her Jaghires. Jaghires are assignments of particular lands, for particular uses, such as the maintenance of families, &c. &c. They are analogous to pensions, with this difference only, that it is a landed estate instead of an annuity paid by the Treasury.

The Supreme Council, of which Mr. Hastings was, though Governor General, an inefficient member, approved of the guarantee, and thus it rested till the year 1781. This was the nature of the tenure by which the younger Begum, or mother of Asoph ul Dowla, held her property.

I shall now explain the situation of the elder Begum, or grandmother of the Nabob Asoph ul Dowla.—This lady had certain allowances settled on her by her son Sujah Dowla, for the support of herself and dependants, and the family of her deceased husband Sefder Jung. She had some Jaghire lands which she held by royal grant, I mean from the Emperor. According to her statement, her grandson Asoph ul Dowla had deprived her of these allowances,

lowances, and done many other acts extremely offensive to her. She therefore adopted the resolution of withdrawing herself from his dominions, and gave out that her intention was to visit Korbella, which Mr. Middleton says is another name for Mecca; but I think it is the burying place of Hufun, Mahomed's grandson, who was killed and buried in the Deserts of Chaldea. This, however, is very immaterial. The Nabob disapproved of her departure, and requested Mr. Middleton's influence, who was then resident at his Court, to prevent it.

Mr. Middleton engaged in the business, and after much negotiation it was settled.—The principal terms were, that she should go to Korbella when she liked; that her pensionary lands should be restored, and during her absence, be under the care of the younger Begum; that she should have the management of the Zenana (that is, of the women and children left by her deceased son,) and an allowance of about 14,000 rupees a month for their subsistence. There were other articles, but I have stated the most important.

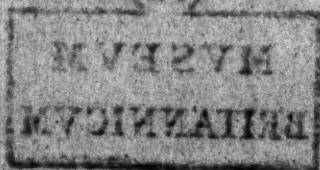
The Managers contend, that Mr. Middleton guaranteed this agreement, and thereby pledged the Company's faith for the observance of it.

Mr. Middleton seems to consider himself as a witness only, and engaged no farther than to use his influence with the Nabob, in case he should be inclined to break it. It does not appear that he ever acquainted the board with what he had done; but his successor, Mr. Purling, did communicate some ac-

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count of this guarantee, (as the Begum seems to have considered it) to the Supreme Council in the year 1780, or thereabout. Probably the Begum might not understand the difference between signing as a witness, and as a guarantee. Mr. Hastings denies having any knowledge of this transaction; and it seems evident from several documents, that he never approved of the resident's interference with the domestic arrangements of the Nabob's family, and the settlements of his parents.

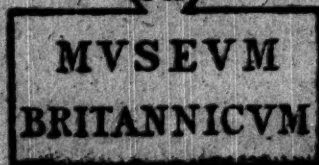
Here I must beg leave to make a few observations upon the conduct of the Nabob and his mother.—The latter had not honesty enough to give up any part of the treasure she had in her possession when her husband died, of her own free will and accord:—for as I have shewn already, it was either the property of her son in his sovereign capacity, as guardian and trustee for the state, or it belonged to him as the legal heir of Sujah Dowla, and to the other children, &c. according to the proportion settled by the Coran.—To have made it her own, she would have set up a will, of which I have heard no mention. The Nabob's character was so well known to his mother and grandmother, that neither of them would trust his word, unless the Company pledged their faith for his observance of it.—Accordingly, we find that when the Nabob gave a receipt in full for his patrimony, though in fact he got no more than the mother chose to give him, Mr. Bristow became security. It is observable that this gentleman acted without



but the authority of the Supreme Council, in respect to the agreement with the younger Begum, as Mr. Middleton did with respect to the elder. It is natural to suppose that these gentlemen considered an arrangement between such very near relations, rather of a private than public nature.—The interference can be justified but upon one ground, namely, that the Begums might be provoked to leave the son's dominions, and carry off the immense treasures they were supposed to possess. Another observation occurs, that though the Nabob is represented by the Managers as a most dutiful son and grandson, yet we find that in 1778, three years after the death of his father, he had so stripped his grandmother of all the jaghires and pensions allowed her by Sujah Dowla, for the maintenance of herself and dependants, that she was driven to the determination of leaving his dominions, as the only means of preserving the residue of her fortune; and to effect this, she gave out that she wished to make a pilgrimage to Korbella.

Here is another instance of the wonderful effect of oratory, and of the skill which men of abilities possess in bringing one part of the picture into the most striking point of view, whilst another of no less importance is thrown back into the shade, and scarcely noticed. I have heard many people, who happened to attend Westminster Hall on particular days, or who read now and then in a newspaper, some part of Mr. Sheridan's summary on this charge, observe, that Mr. Hastings must have been lost to all the feelings of humanity, when he insisted on the Nabob's taking

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taking away the treasures of his parents: whereas the fact is, that the old Begum owed all she had to the interference of Mr. Middleton; and the younger Begum is indebted to the mediation and guarantee of Mr. Bristow for the detention of that property which she at least ought to have divided, or, in the opinion of most people, to have given up all together.—At the same time that I think it was indecent in the English Government to interfere in their public capacity between the Nabob and his parents, yet having once sanctioned the agreement, and committed their faith to the Begum, they most undoubtedly ought to adhere to it. I think also with the Managers, that the circumstance of Mr. Middleton's signing the treaty, though perhaps without the knowledge of his masters, bound them as effectually as if it had been done by their express order and instruction; that is, if he signed it as a guarantee, not as a witness. But it is not reasonable to think, that in the former case, he would have kept it from the knowledge of his superiors: if he did, he ought to answer for it himself.

Mr. Middleton, on his examination, did Mr. Hastings, in the opinion of many people who could reason only from the comparison of a few circumstances, more injury by his want of recollection, and cautious mode of answering, than he would have done, had he given the most correct and explicit elucidation.—I do not mean to say that Mr. Middleton was incorrect, but not knowing what facts might be thought criminal by the House of

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Commons, he seemed afraid to answer many questions, lest they might on a future occasion be turned against himself. It seems Mr. Middleton was advised by Counsel, (not Mr. Hastings's, for they refused to give him any on the subject) not to answer particular questions. That cautious mode may be very right, and it certainly must be so, or it would not be recommended by all lawyers in general; but to those who are not professional men, and do not make the same allowances, it seems as if the witness was conscious of guilt, and therefore wished to hide it. The hearers, such as I have described, immediately give him credit for some thing infinitely worse than his examiners themselves impute to him.

This witness stood in an awkward predicament:—he had formerly been accused by Mr. Hastings, before the Supreme Council, of misconduct in this very business; and when he found himself pressed by entangling questions, in Westminster Hall, he seemed fearful that every answer might be turned against himself. The Managers represented this appearance of fear as the effect of his caution, and desire to screen Mr. Hastings; whereas in fact, his own safety was his real object, as he at last acknowledged, when he threw himself on the indulgence of the Court.

Such was Mr. Middleton's case. Before I drop the subject of the right each Begum had to her treasure and jaghire, I must answer a question that will naturally rise in the mind of every attentive reader, namely,

namely, why did not the Nabob take possession of the treasures deposited by his father in the Zenana, immediately upon his accession to the Musnud or Throne? The answer is, that it was not in his power without waging war with his mother, who had all the city of Fyzabad and its vicinity in her interest, and therefore the issue might have been unfavourable. The Nabob took a different method, and tried to borrow the money, in which he succeeded to a certain amount; and when his mother would lend no more, he applied to Mr. Bristow, as I have already stated. I should have observed, that in the year 1778, the Nabob seemed inclined to break through the agreement made with his mother, under the sanction of Mr. Bristow, but was prevented by the Board.

I have shewn how the Begums became possessed of their treasure and jaghires, and in what manner the Company guaranteed the possession thereof to the younger Begum; for I cannot find that there is any proof of the Company's faith being pledged to the elder. I have read the evidence over attentively, and I cannot find that Mr. Middleton was authorised by the Board; on the contrary, there is a Letter from them to him forbidding his active interference, but approving of his conciliatory mode of settling the disputes between the grandmother and grandson by advice. It does not appear by any of the public correspondence, that any greater latitude was ever given to the Resident.

The Managers argue this point, on a presumption that there must have been private authority from Mr. Hastings alone. I must leave this point as it stands, there being suspicion on one side, and denial on the other.

In my former Letter I stated, that in the year 1781, Mr. Hastings went to Benares, and that an insurrection broke out in that province by the means of Cheyt Sing and his adherents. During these troubles, the Nabob marched with his troops to the aid of Mr. Hastings, and met him at Chunar, in the vicinity of Benares.

A new agreement was made between the Nabob and the Company, consisting of several articles; but that which more immediately concerns this part of the Charge was, that the Nabob should be at liberty to resume all the jaghires and pensionary lands in his dominions. In the execution of this plan, Mr. Hastings urged the Nabob to make the resumption general. But with respect to the jaghires of the younger Begum, he insisted that an annuity should be paid her, equal to the sum it was supposed to bring in. In this resumption Mr. Hastings seems in some measure to have been influenced, or at least accelerated by the reports he had heard concerning the aid which Cheyt Sing derived from some of these Jaghiredars, particularly the Begums. But if he had heard no such report, reason and sound policy would have justified the measure. To what can we impute the rebellion at Benares, but to that weak policy adopted by the Supreme Council, when they

they suffered Cheyt Sing to keep up a large body of troops, in a manner independent of the English Government. I do not mean that he was independent of the English Government, for he certainly was not; but the army in his pay looking no higher up than to their immediate Chief, put it into his power to assert independence whenever an opportunity offered.

One would have thought, that the double game which Bulwant Sing played between the Nabob Sujah Dowla and the English on a former occasion, might have convinced the Company's Servants of the absurdity of having too powerful a subject. Such was the case with the Begums, for their jaghires were so large and populous, that we find the younger Begum told Mr. Bristow, that if the English would stand neuter, her son might do his worst. Mr. Hastings saw the necessity of breaking this power, but he ought to have seen it sooner. Perhaps in excuse for this he might say, "I saw it before, but had it not in my power."—It may be so.

The history of Europe shews the necessity of having the strength of a kingdom concentrated in one government, of whatever form that government may be. England was full of intestine commotions till Henry the Seventh reduced the power of the Barons; and France made but a small figure, before the whole force of the kingdom was under the immediate controul of one administration.

The resumption of the jaghires was certainly a wise measure, and cannot stand in need of any defence. Neither is it unusual for Sovereigns in India to revoke these grants; and I observe that Mr.

Purling

Purling gave evidence to that effect : for surely the power that gave, may resume. The Begums had in natural justice a claim to an annuity of equal value, both on account of dower and of the guarantee, provided they had committed no act deserving confiscation. Our legislature takes away part of any man's land, when wanted for public use, and compels the owner to take an estimated compensation in money, without consulting his inclination. If then it be justifiable to take away property for public convenience, such as new roads, canals, &c. how much more reasonable must it be to do the same, even in a much higher degree, when the not doing it endangers the peace and safety of the community. Besides, in the case of the Begums, there was something worse than ordinary : the administration of the jaghires was in the hands of two Eunuchs, who were notoriously disaffected to the Nabob. It is owing to this circumstance, that no direct proof of revolt can be brought home to the Begums. Proof there undoubtedly is, but it is circumstantial. Their guilt can only be inferred from the conduct of their Ministers, for Ladies of their rank do not transact business in public. But of this I may have occasion to speak hereafter.

There appears to me to have been great impropriety in interfering between the Nabob and his parents in every instance, unless the Supreme Council considered them as possessed of separate sovereignties. What would the politicians of Europe think of it, if they saw our Ministry guaranteeing to the mother

mother and grandmother of the French King their respective jointures and marriage settlements? However, as far as the guarantee extended, it is incumbent upon Mr. Hastings to shew that he adhered to the spirit of it, or to assign some reason for the contrary; otherwise, I agree with Mr. Burke, that the honour of the nation is tarnished. I think I have already shewn beyond the power of objection or cavil, that the resumption of the jaghires was founded upon principles of prudence and sound policy, confirmed by recent and fatal experience. And if it lay in my power, I would rather institute an inquiry into the reason of its not being done sooner, than of its being done when it was. But as I said before, the Begums were intitled to an equivalent; an annuity of equal value was proposed, but not readily accepted: they did not relish the idea of parting with their influence in the country. Doubtless they were encouraged to resist by their favourite Eunuchs, whose interest would be ruined by it. It is probable that they reasoned in the same manner as a wealthy Gentleman does in this country, who sets more value on 10,000 l. a year rising from an extensive tract of land in some county, than he does on 11,000 l. issuing from the Bank, as the interest of his stock. The former gives him great influence, the latter very little, if any. In the resumption of the jaghires in general, the Nabob was left to his own discretion as to equivalents; and probably would have been so with respect to his mother, had not the Company's faith been pledged. He was therefore

fore bound to make them compensation, and the Company became answerable for the payment of the annuities, in the same manner as they did for their possession of their jaghires. In short, it was an useful commutation.

Mr. Hastings in his defence says, that gratitude to the Nabob for his ready assistance at the time he himself was in distress at Chunar, was an accessory motive to the consent he so readily gave to the resumption of the jaghires. That might serve as a good reason for expediting the business, but one would have thought, that Mr. Hastings had seen enough at Benares to convince him of the general tendency which all the subordinate Chiefs have to revolt upon all occasions; and that none of them are actually subordinate longer than they are unable to resist. It may be said, that the Constitution of the Mogul Government is, *imperium in imperio*, or rather *multa imperia in imperio*. It is so; but it is wretched policy for the English to adopt, who maintain their possessions in the East, as much by opinion as by force; and this opinion of English invincibility grows weaker every day. To this division of power we may attribute all the intestine commotions in Indostan, and the present debility, I may almost say, annihilation of the Emperor's authority. There will always be an opposition, stronger or weaker, to every government; and the difference which England feels between its present state and that previous to Henry the Seventh, is, that then opposition had recourse to their swords,

swords, and now to their tongues. The men are alike, the spirit is alike, but the means are altered.

From what I have said, it must be allowed that the resumption of the Jaghires was prudent, wise, and just, whether a guarantee existed or not. But it strikes me as a very absurd conclusion to maintain, that because a Sovereign has entered into a guarantee, he is not at liberty to withdraw it, when the circumstances which induced him to make it are no longer the same. All securities of this kind are made under an implied, if not expressed proviso, that it shall endure no longer than the party favoured shall deserve it. The only rule whereby we can judge of the conduct of the Supreme Council, is that of political prudence. Was it right in the English Government to interfere between the Nabob and his parents? Certainly not, if the Nabob is considered as a Sovereign; if as a Subject, perhaps otherwise. Was it right to advise, or permit him to resume the Jaghires, when experience had shewn their ill consequences? Undoubtedly it was, and the blameable part is the first granting of them, particularly to women, who must entrust the management to other hands.

Having now shewn why the Jaghires were and ought to be resumed, I shall proceed with the narrative part. After the execution of the treaty with the Nabob, on the 19th September, 1781, for the resumption of the Jaghires, &c. it appears that Mr. Hastings receiving still farther information of the Begums having aided Cheyt Sing in the rebellion at

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Benares, conceived the idea of confiscating that treasure which was in the possession of the younger Begum, the Nabob's mother, and which, as I said before, was guaranteed by Mr. Bristow. The Managers lay much stress upon Mr. Middleton's renewing the same guarantee to the younger Begum in 1778. It does not however appear, that he had any particular authority for it; neither can I perceive any use it was of; for Mr. Bristow's act bound the Company as firm as the renovation of the same by Mr. Middleton could possibly do. The guarantee to the younger Begum is admitted: it is that to the elder only which appears to be in dispute. But even this is in reality of little consequence, for the two Ladies were so blended together in every act, that whatever involved the one, involved the other also.

The two Begums are confounded together even by Gentlemen well acquainted with India in general. The natives of India observe a foolish reverence in speaking or writing of persons of high rank: they do not like to mention their names, particularly of women, and hence in some of their letters in the Books of Evidence, there is an apparent obscurity as to the Lady meant. The fact is, the principal share of power was in the hands of the younger Begum, but the elder was the adviser and directress in most things. The responsibility lay with the former, as far as it could lay with a Lady in a Zenana.

In November 1781, as Sir Elijah Impey was about to pay the Nabob a visit at Lucknow, Mr.
Hastings

Hastings sent by him a verbal message to Mr. Middleton, the purport of which was; that if the Nabob were inclined to confiscate or take possession of that treasure, which had formerly been in dispute between him and his Mother, the guarantee would not be pleaded against him. I do not know that these are the precise words; but the spirit I take to amount to this, that the Nabob might, if he thought proper, take possession of the treasure.

This is seemingly circuitous, but there was no method of interfering with the Nabob's government but in the way of advice and recommendation. It was well known that the Nabob longed for an opportunity to possess himself of that treasure which he always had considered as unjustly withheld from him.

The Managers take wonderful advantage of this circumstance; I mean the suggestion made by Mr. Hastings in the way I have mentioned. The advising a son to rob his mother is by them placed in a thousand different lights. It certainly had a great effect upon the House of Commons, when Mr. Sheridan opened this article; his Speech also had some effect upon the audience in Westminster Hall. I have sometimes thought that it would save a deal of trouble, if every advocate and orator, on the accusing side of the question, were obliged to take an oath that he would not directly or indirectly endeavour to make others believe what he did not believe himself, or to take a similar oath at the end of his Speech, that he had not mis-stated any fact

wilfully, nor represented any thing better or worse than he really believed it to be. I would lay this tax only on the accuser. Humanity makes great allowance for the accused. It is natural for a man to deny guilt; self-preservation justifies it: but there appears to be something unpardonable in imputing more criminality than is deserved, and in torturing acts into guilt by misrepresentation.

When Mr. Sheridan was talking of the tender Son, how much it would have taken off from the brilliancy of his colouring, had he said to the audience in the next sentence; *but remember, there was no time when the Nabob would not have done this very act, if not restrained by the Company: and if he had added, this very Son was so cruel as to deprive his Grandmother of the allowances settled by his Father, and drove her to the resolution of flying from his dominions, unless the Company would protect her.* How much would it have destroyed the pathetic part of his oration, had he stated, that these very treasures were unjustly detained by an avaricious Mother from a needy and distressed Son. Yet Mr. Sheridan knew most of these circumstances perfectly well, when he made his oration of four days length in Westminster Hall. He might say, and it is the only thing he could say, I do not believe one syllable that makes in favour of Mr. Hastings, but I implicitly believe all that appears or can be made appear against him. I cannot help saying, though perfectly uninterested in the fate of Mr. Hastings, or in the event of the trial, that the knowledge which I possess of the subject,

ject, gave me that disgusting kind of view which a person unaccustomed to plays is liable to, and always feels, upon removing from the front boxes to behind the scenes. Mr. Sheridan understands the human mind: he knows how inflammable it is, and he knows how to warm and to cool it; he can mould it to his own liking. He knows that few people possess a mind like his own, that is capable of surveying a large edifice at one comprehensive glance: he knows also, how to fix the observer's eye upon that part which may serve his own purpose, by exciting either pleasure or disgust.

I have been led into these digressive reflections by referring to that Gentleman's Speech to refresh my memory, in regard to a particular circumstance I shall soon have occasion to state.—I have just laid it down, impressed with two very contrary sentiments: I feel a high degree of pity for the weakness of those minds, which can be seduced by founding periods, and a still higher degree of admiration at the elocution of the ingenious speaker.

To form a tolerable judgement of the merit or demerit of Mr. Hastings's conduct, you must enter into all his views and intentions, when he left Calcutta to visit the Upper Provinces, and to settle the dispute with Cheyt Sing. These I shall state, as far as I can collect them from the several accounts he has given himself, from the knowledge I had through other channels, and from the observations made by the Managers during the trial. Mr. Hastings's first object was certainly the procurement of money,

money, without which it was impossible for the wheels of Government to move.

I cannot avoid remarking in this place, that whatever errors Mr. Hastings may have committed, he was driven into them by a solecism in politics. I say a solecism in politics, yet I do not know where to fix the blame.---What I allude to, is the appointment of a Council to govern a kingdom; to wage war, and perform every other act of sovereignty, without pointing out some mode of raising extraordinary supplies for extraordinary occasions. Every body knows, that in all States, there are times when the product of the year will not defray the expences of the year. What then is to be done? The Council have only the choice of illegalities---take what steps they will, they must be condemned at all events, of acting illegally (I mean with respect to the laws of Great Britain) if they are tried by Englishmen; for many people of this country have no idea of any thing being legal and just, which has not the sanction of Parliament, without ever considering, that in India there is no Parliament to consult.---Another consideration with Mr. Hastings seems to have been the correction of some evils in the Nabob's Government, whose wealth and resources were found to be on the decline, and unable to support the army, there being at that time near a third of our military establishment in the Nabob's dominions, and in his pay. Probably he might then have had in contemplation the resumption of some, or all the Jaghires; for the Nabob had granted away so many as to diminish his revenue with-

without diminishing his expences. He doubtless had other views, but these were the most conspicuous. It happened with him, as it does with most others, that in the prosecution of one design, another design grows out of it; that is, unexpected events happen, which generate other events. The rebellion of Cheyt Sing was certainly an incident that deranged Mr. Hastings's plan; but it is to that rebellion we must attribute the conduct of the Begum; for though she might have entertained ill will to the English, she would have concealed it till a fit opportunity occurred of manifesting it. The insurrection at Benares was like a shower of rain, which brings forth the weeds; but the seeds were in the earth before. No doubt, when Mr. Hastings was well assured of the Begum's disaffection to the English Government, and of her having lent aid to Cheyt Sing, he conceived the idea, not of punishing her, for her sex would not allow of it, but of depriving her of the means of future mischief. But as to the Jaghires, he most likely would have advised or permitted the resumption of them, let the Begums have acted how they would; but they would have had a pecuniary equivalent.

There is one thing which has often occurred to my mind, when reflecting on the cruelty of taking away the Jaghires and treasures, as described by Mr. Sheridan; but it has not been drawn into argument by either party: it is, that the only people really and *bona fide* injured by taking away the Jaghires, were the *two Eunuchs*, the Begum's Prime Ministers. Theirs was the real power, and they had all the influence,

fluence. The Begum could, from her situation and confinement, do nothing but by the advice of these men. A woman secluded from view in a *Zenana*, could be but a mere tool or machine in the hands of her ministers. They wrote, and dictated all her letters. It is impossible to have been otherwise. The very idea of suffering two Eunuchs, under the name of the Begum, to manage a large province, is absurd in the extreme, and could have been suffered only by want of consideration, or the means to alter it. You see then, Mr. Hastings could not have had an idea of executing vindictive justice towards the Begum, whatever he might have had towards her Eunuchs. The former was beyond his reach, whatever his inclinations might have been: the latter were amenable to justice in their persons, and certainly ought to answer for their mal-administration, as much as a minister in this kingdom would do in like circumstances: I may say, a great deal more, for many reprehensible measures in this country, which have been imputed to the Minister of the day, did not originate with him. He was consequently blameable for the execution only; but the Begum's Eunuchs were the authors and executors of every act, good or bad. So early as the year 1775, Mr. Bristow speaking of these men says, that they preserved "*a total independence of the Nabob and his Ministers, refused obedience to his perawannahs, and beat the officers of his government.*" I would here have it be understood in general, that when I speak of the disaffection and seditious disposition of the Begums, I follow the language

guage of the accusers and the accused; for, in my opinion, the Eunuchs were principally, if not wholly culpable.

I said in a former part of this Letter, that after Mr. Hastings received what he thought decisive testimony against the Begums, he conceived the idea of confiscating the treasure of which I have said so much. It is not perfectly ascertained, at least I cannot make it out from comparing the evidence, whether it arose from Hyder Beg, the Nabob's acting Minister, from Mr. Hastings himself, or from Sir Elijah Impey. The latter speaks of it as an idea of his own suggesting; but the most probable thing is, and it is stated by Mr. Sheridan in his speech, that it was first proposed to Mr. Hastings by Hyder Beg, through the means of Ally Ibraheem; but, in my opinion, it is very ill worth inquiring into. Certain it is, that Sir Elijah Impey gave his opinion in favour of the legality of it, founded on the supposition that the Begums had been guilty of hostility, either by causing insurrections, or secretly aiding Cheyt Sing.

I have already taken notice of Sir Elijah's going to Lucknow, and also of the commission he was to execute; but it happened that in a conversation with Mr. Hastings, concerning the revolution which had just then taken place in Benares, he expressed an idea, that as Mr. Hastings had many enemies in England, it might be adviseable for him to collect Affidavits in proof of those facts which had led to the revolution abovementioned. Mr. Hastings caught the idea, and

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approved of it, in my opinion very injudiciously. In this opinion I do not expect many supporters, but my reasons are these:---Affidavits are to remove doubts, but a rebellion cannot be a doubtful thing; its consequences are felt far and near, and the report of it spreads, uncontradicted, through whole countries. You often hear various accounts as to the minutæ, but no man doubts of any of the rebellions he reads of in the English History. Besides, greater revolutions have been effected in India, and the Directors relied upon the veracity of their Government for the statement of facts. Add to this, the idea of defending before accusation implies guilt. I must say, I do much disapprove of Sir Elijah's advice, and blame Mr. Hastings for accepting it. Sir Elijah is esteemed a man of great professional abilities, and of a very superior understanding; he may have many objections to what I have stated, but my mind cannot of itself strike out any good reason for taking those affidavits.

There is one mistake into which the Managers seem to have fallen, for they speak of the affidavits as having been collected to establish the guilt of the Begums, whereas that was not the object of them. The scheme of confiscating the treasure was adopted previously to the taking of the affidavits. They were intended to justify what had happened at Benares, and all that relates to the Begums came in collaterally; for the deponents gave in of themselves all that they knew of the troubles in general.

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Had these affidavits been collected for the purpose of criminating the Begums, they would have been much more full and explicit, that is to say, Mr. Middleton would have informed those who made the affidavits, that they must be particular in stating all they knew concerning these Ladies and their dependents. Mr. Sheridan took great advantage of this want of point, and infers from it, that Mr. Hastings could get no better proof to rely upon; whereas the fact is, Mr. Hastings never tried to collect a body of evidence against the Begums; as it came in collaterally, and almost accidentally, he availed himself of their contents; when he found himself attacked upon this article. This distinction seems to be understood by very few of those with whom I have conversed on the subject. I know three officers now in London, who conversed with some prisoners taken during the rebellion of Cheyt Sing, at Pateeta or Lutteepore, who declared they were of that party of Nujeebs who were sent by the Begums from Fyzabad, and I believe from Colonel Popham to the youngest officer in his camp, the fact was never doubted nor disputed. This is a circumstance I should not mention now, if the gentlemen to whom I allude had not been summoned to give evidence in Westminster Hall; and I must say, that Mr. Sheridan never displayed his abilities to greater advantage, than in the management of his evidence; I mean by contriving to keep back those gentlemen who could have proved more than enough to spoil his speech.

Nothing but the taking of these affidavits could have suggested to Mr. Pitt the idea of bringing the Begums to trial before the treasures were confiscated. But Mr. Pitt did not consider the impossibility of doing that:—their sex, the custom of the country, and a variety of other obstacles, arose in the way. Mr. Hastings had no judicial authority over any person in the Nabob's dominions, much less over his parents. With respect to them, he was only guarantee, which security they forfeited, and he withdrew it of course. Mr. Pitt might say, the Nabob should, in some way or other, have given them a fair hearing; but such an idea could originate only from want of knowing the Constitution of the Mogul Government. There is no court of justice to decide between the sovereign and the subject; the former admits of no authority or judgement superior to his own. The Monarch does not erect a tribunal, and become plaintiff in his own courts, as the King of Great Britain does. He hears, determines, and punishes from his own discretion alone: he makes his own judgement the rule of evidence. It is not so in the inferior Courts, for there, in cases between subject and subject, the rules of evidence are closely adhered to; but I never yet heard of a State trial or impeachment in India.

Sir Elijah, at the time he went to Lucknow to take the affidavits, executed his own commission also with respect to confiscating the treasures. The Nabob accordingly applied for permission, which was granted of course. But though, as I observed before, the

idea of confiscating the treasure originated with his own Minister, the Nabob now wanted to make the confiscation an alternative for the general resumption of the Jaghires, that is to say, he wished to be excused from taking the Jaghires from the *Orderlies*, but expressed no reluctance with regard to those held by the Begums. There appears to be an instability in the Nabob's conduct throughout all this business, not easily reconcileable, at first sight, with common sense. But the cause of it is accounted for, by recollecting that Mr. Hastings pressed him very hard to make the resumption general; and as that measure would involve many of his particular favourites in ruin, the Nabob would rather have foregone the whole plan than injure them. These men, who had so strong an influence over the mind of their master, were a set of *Orderlies*, who owed their promotion to disgraceful services. Though the Nabob left Chunar the latter end of September, intending, as it was believed, to begin the resumption of the Jaghires immediately, nothing was done during the next month, and part of November.

Mr. Middleton, whose influence with the Nabob was much relied on by Mr. Hastings, was either very dilatory, or very unsuccessful. And to hasten this gentleman in his endeavours, was another object of Sir Elijah's journey to Lucknow. It were needless to enter into a narrative of Mr. Middleton's excuses, which appear rather contradictory, at least to my understanding. The alternative of confiscating the treasure, instead of resuming the Jaghires, was not accepted

cepted by Mr. Hastings; on the contrary, he pressed the Nabob to adopt both measures, to which he was at times consenting, and at times adverse: however, the result was, that both were carried into effect, though not without much difficulty.---The two Eunuchs, who were the Begums' Prime Ministers, were confined for some time, before they could be prevailed upon to give up, or discover the concealed treasure.

There certainly is one objection which must naturally occur to the mind of every attentive reader, namely, why was not the Nabob suffered to follow his own inclinations upon these two propositions? The only answer that suggests itself to my mind is, that the Nabob Asoph ul Dowla, is an extremely weak man, totally unqualified for any public station in life; that Hyder Beg Cawn, his acting Minister, has for many years, in fact, managed all the business of the *Subahdary*; that he does so at this hour, under the auspices of Lord Cornwallis, for his Lordship represents the Nabob's character nearly as I have done; and though he does not interfere directly with the Nabob's Government, he relies upon the Minister, and consequently supports him. Hyder Beg Cawn knows that his office depends upon the countenance and interest of his Lordship, and therefore studies his will and pleasure. The Nabob is sensible of his inability to displace the Minister, without breaking with the English Government, and is therefore obliged to follow his advice and opinion. The same influence prevails in the Nabob's Councils now as it did under the

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the former Administration in India, though perhaps more circuitously.

Hyder Beg was strenuous both for the resumption of the Jaghires, and the confiscation of the treasures: he was not biassed by the same partialities to underserving objects as the Nabob was. He knew the danger of entrusting the eunuchs with power, and the ill use they had made, and might again make, of the treasure in the possession of their mistress. He knew also the weakness of the title under which she held it. He, as the acting, and only intelligent minister, was well acquainted with the disordered state of his master's finances: the vast debt, near a million and a half, which he owed to the India Company; and the utter impossibility of paying any part of it, or even preventing the troops from mutinying, without a speedy supply of money—he, I say, knowing all these circumstances, was strenuous and urgent both for the resumption of the Jaghires, and the confiscation of the treasures. The Nabob was, like many other weak Princes, compelled in a manner by his minister to consult and act for the good of the state.

I have all along called it a confiscation, in which I have followed authority; but as many as are of opinion that Mr. Bristow's guarantee was injuriously forced upon the Nabob, will quarrel with the term, and say, that it was nothing more than the Nabob's taking his just, and long-withheld right. But I am speaking of facts which will be equally true, though I may err in the choice of terms.

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The sums of money obtained from the Begum, together with the jewels and other valuables, amounted to about sixty lacks of rupees, or 600,000*l.* sterling. The whole was not obtained at once, but received at different times, as the Begum and her ministers could be prevailed on to part with it. Mr. Sheridan, in his summary of the evidence on this charge, dwelt much on the cruelties practised on the eunuchs; but I am told, he was not so very pathetic before the Lords as he had been before the Commons, when he first opened this charge.

Here it is necessary to observe a little on the difference of customs in England and Indostan:—In the former, a man glories in being able to pay, and in having paid his debts; in the latter he boasts among his friends of having evaded them. But in all countries where debtors refuse, or neglect payment, some sort of personal severity is made use of. Without it the recovery of debts would be very precarious all over the world. It took up much time during the trial of this article, to investigate the mode in which the eunuchs had been treated, and also to inquire into the sufferings of the Ladies of the Khord Mahal. Khord Mahal signifies a little palace, and in this instance it means a separate building, where the ladies of the seraglio resided. I apprehend its inhabitants must have been principally inferior concubines, and natural children of the late Nabob Sujah Dowla. As far as I could collect from the evidence of Major Gilpin and others, the inconveniencies which these ladies suffered arose principally

pally from failure of returns from certain assignments settled for their support, and would have happened equally, if the Begums had been in possession of their treasures and jaghires.

Much evidence was brought as to the manner in which the Begums' palace was surrounded by the sepoy, and the inconvenience which they consequently suffered. But I understood this was conducted by the Nabob and his ministers, who certainly best knew how to compel restitution of property, without infringing the laws of decency and punctilio. As they cannot enter the Zenana in the same manner a sheriff's officer does the house of a resisting debtor, with a writ of execution, they are necessarily driven to surround the place, and prevent ingress and egress. There must be some way of enforcing the law upon women as well as men, let their rank be what it may; and it seems the mode adopted was the best, if not the only one.

I believe also, that the sepoy which surrounded the Zenana were the Nabob's own, or if they were the Company's, the orders for their conduct came from the Nabob originally. I do not see that this inquiry, let it turn out as it may, can affect Mr. Hastings, for he was not present. He can be answerable for no more than the permitting, encouraging, and persuading the Nabob to confiscate the treasures. If that measure was right, the mode of execution cannot make it wrong. If the Begum was wrong in detaining the treasure, all the inconvenience she was put to, was imputable to her own

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obstinacy. The whole merit or demerit must depend entirely on the withdrawing of the guarantee, and encouraging, or even insisting on the confiscation.

There is to be sure an immense mass of matter in this article, for it fills up a folio volume, exclusive of many very long speeches, probably, if printed, enough to fill another volume in folio; but the principal points may be brought into a very small circle indeed. The pith of what the Managers say, is as follows:—First, they endeavour to prove that the treasure was the property of the younger Begum, left by her husband, for the support of the several branches of his family; but of this I cannot discover a vestige of evidence, either written or oral. Then they endeavour to support her title to the treasure, from the sacredness of the place where it was deposited; namely, the Zenana; but I have commented on the Zenana law already. Next they say, if both these titles fail, the Company's guarantee cures all former defects, and that the resumption of the Jaghires was also a violation of the same guarantee. As Mr Hastings has already given in his defence to the House of Commons, they are enabled to combat the arguments he is expected to bring in vindication of his conduct; and they consequently maintain that the Begums never assisted Cheyt Sing with men or money; that the troops found in Cheyt Sing's army, which were in India, supposed to have come from Fyzabad, the Begum's residence, actually came from Lucknow, the Nabob's capital. This assertion

tion may be true, but it is at war with common sense. It must have been very difficult, I might say almost impossible, to enlist a body of men to serve against the English at Lucknow, where so many English gentlemen resided, without the circumstance coming to their knowledge. Had the Nabob encouraged such a thing, it would have amounted almost to a declaration of hostilities.

Having endeavoured to shew that the Begum and her ministers had committed no act of forfeiture, they proceed to shew, that no state necessity existed; that is, that the English government had made a treaty of peace with Sindia, one of the Mahratta Chiefs, and had been successful on the coast, consequently the Company's affairs was secure from danger, and the troops in no want of money. In this manner they preclude every kind of defence, by saying—You did not confiscate the treasure for any act of the Begum, or her minister; nor were you under the necessity of raising money out of the ordinary way, to carry on the war.

When a person in England, and who never was out of Europe in his life, undertakes to prove, in defiance of, and in opposition to the testimony of several gentlemen who were on the spot, that no insurrection broke out, and that no act of hostility was committed by the inhabitants of a province in Asia; I say, when a person undertakes that task, every hearer must at least give him credit for great courage and resolution. But should the same person, in contradiction to what passed under my own eye, in

contradiction to thousands of documents which prove that the war in India lasted long after the treaty with Sindia and the seizure of the treasures—should the same person, I say, rise up against all these contradictions staring him in the face, and tell us, that no state necessity existed in India in the year 1781, what must my opinion be of the courage and abilities of that man?

The Managers lay great stress on the active part Mr. Hastings took in urging the Nabob to confiscate the treasure, and to resume the Jaghires of his parents. They accuse Mr. Hastings also of subordination of letters, a term I do not understand well enough myself to explain it to others. They say also, that he carried on with the Resident at the Nabob's court, two kinds of correspondence, one public and another private. They lay heavy stress on his sending or permitting Sir Elijah to collect affidavits, which they consider as done rather to justify a future act of violence, than to discover the truth of what had passed. But I shewed in a former part of this letter, that the affidavits were taken to convince the Company at home of the causes of Cheyt Sing's rebellion, and that all that came in concerning the aid lent him by the Begums, was collateral, and merely the overflowing of the minds of those who made the affidavits; that is, being desired to state all they knew concerning the troubles in the Upper Provinces, they stated what they knew and heard, respecting the Begum and her ministers.

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The Managers say also, that the rebellions which broke out in Oude and its vicinity, during the troubles of Benares, were occasioned by the oppressions of Colonel Hannay, who was at that time a Military Collector in certain districts of the Nabob's dominions. These are not all the items or allegations; but they are the most striking features in the second article of impeachment. The Managers also charge Mr. Hastings with receiving a hundred thousand pounds, as a present from the Nabob, at the time the treaty was settled at Chunar. This sum was carried to the Company's credit; but they impute the act to fear of detection. I have taken no notice before of this present, because there is a particular article of impeachment dedicated principally to the subject of *presents*, and which is now at issue.

I do not know how Mr. Hastings will defend himself against these allegations, it being now intrusted to council, who, you know, mechanically (if I may use such a word in this place) deny all that cannot legally be proved against their client. This, no doubt, is a very proper mode of defence, and so common among lawyers, that a professional man would be condemned by his brethren, if he did not adopt it. But though I am ignorant as to the defence which will now be set up, or offered in a court of justice, I can state the substance of what Mr. Hastings has already said in answer to the allegations. He insists that the treasures were the property of the state; that Mr. Bristow acted wrong in making the guarantee, but as he did make it with the appro-
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tion of the majority of the Supreme Council, the Company was bound by the guarantee, until the misconduct of the Begums forfeited it;—that the Begum did forfeit her claim to protection, by the aid she lent to Cheyt Sing, of which he had proofs satisfactory to his own mind; that the resumption of the jaghires was politically necessary;—but that he intended her an annuity of equal value, guaranteed in the same manner as her Jaghires had been;—that a state necessity did exist at the time he consented to the Nabob's taking possession of the treasures, which his mother withheld from him;—that in employing Sir Elijah Impey to receive the affidavits, he thought the rank of the Chief Magistrate would give additional weight to them. It is not meant that it could verify them, but that it would prove that the deponents really did swear to their contents, which might otherwise have been doubted. It is probable Mr. Hastings might be led into taking the affidavits, by the reflection that he did not enjoy the confidence of the Directors at that period, though he did that of the proprietary.

Mr. Hastings denies the insurrections in the Begums' jaghire lands having been occasioned by the exactions of Colonel Hannay. I did not observe in reading the evidence through, any probability of Colonel Hannay's having excited or caused the disturbances in the Begum's jaghire lands. I do not see the possibility of it, as he had nothing to do with her districts. With respect to the subornation of Letters, I do not know what Mr. Hastings will say, nor do I well know what the words mean,
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when applied to letter-writing. If the Managers mean, that Mr. Hastings procured such letters to be written by the natives, as would serve to colour or justify his own conduct, it can only be said, that if he did act in that manner, it must have been owing to the opposition he constantly met with in council; no man ever does an act indirectly, that he can effect by direct means. No man who has not been a witness to the pernicious effects of a perpetual shifting balance of power, can form an adequate idea of the difficulties a Governor-General must be under, when opposed by the members of his Council. He was by duty bound to propose plans for various operations, particularly in time of war, and when his plans were approved by the Council, nothing was more common than to have them checked in the middle by some objection or other. These difficulties drove him unavoidably to do things which he would gladly have left undone, if his plans possibly could have been effected by direct means. It was precisely the case of a ship having a harbour in view, with a foul wind: to make the port she must make many traverses, and alter her tack very often.

To an observer who did not know the pilot's intention, these frequent changes in the course would appear unaccountable and absurd; but the sailors who knew the object, are not at all surprised at it.—Astronomers were long puzzled to account for the apparent irregularities in the planetary movements, but when they erected a scheme, and placed the eye in the centre of the sun, they obtained an immediate

solution of appearances, and found the motions of the planets to be regular and uniform.

There is no way whereby you can account for Mr. Hastings's conduct satisfactorily, without taking into consideration the difficulties he had to contend with, and the objects he had in view. To preserve the Company's possessions in a very dangerous and complicated war, was his principal object, I may say, as far as I can judge, his only one. But the difficulties which he had to encounter were innumerable: the Court of Directors disapproved of almost every means he made use of to raise money, though they never pointed out to him any mode of supply. On the contrary, they still expected the same investment in time of war as they did in peace. And here, by the bye, I cannot help commenting a little on one striking absurdity which exists in the Bengal Government. The Company require two millions sterling annually to be drawn from Bengal by way of investment, or to be sent to Madras and Bombay; yet after all these exactions, they expect the country to flourish, and wonder that it does not. Neither the Directors nor the Managers seem to consider the difference that must unavoidably take place in the state of two countries governed upon two diametrically opposite principles. This kingdom is governed with an eye to its own prosperity and advantage; but Bengal is governed with an eye not to its own prosperity, but to the prosperity and advantage of Great Britain. It is, in my opinion, extremely absurd to expect the same effect from two causes so totally different.

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I cannot help comparing this system of government to the management of a farmer, who, having two estates, carries all the manure to one estate only, and thus having robbed one to improve the other, he wonders that both do not bear equally good crops. If any person seriously considers the drain of treasure from Bengal in the last war, and since the peace, he will be astonished to find the country in so very flourishing a state as it now is. It carries conviction to my mind, that the British government is by far the best, and the most lenient that Bengal has experienced, since the first invasion of it by the Mahomedans.

That a state of necessity did exist, I can speak from my own knowledge; I mean, that the troops must in a short time have mutinied, had not treasure been procured by some means or other. For my own part I know of no other resource at that period, than that which was adopted; but it is probable, that if the Begums had not been hostile to the English interest, and thereby forfeited all claim to protection, Mr. Hastings would have tried to borrow the money upon the Company's security. I do not know that this plan was in his mind, but it seems to me to have been such as a reasonable man would have thought of. Neither do I think the Begum would have objected to the Company's security. To Mr. Hastings, considered either in his private or public capacity, it could have made but little difference whether he raised the money by loan or confiscation. The difference would not have been much

to the Company's interest; for the treasure confiscated was employed in paying the Nabob's debts, who then owed the Company a million and a half nearly. The only difference that I perceive is this, that the Nabob would have owed the Company 60 lacks more, and the Company would have owed the Begum the same sum. This is an idea of my own, having never heard it started by any one. It arises in my thoughts, from recollecting that there were at Cawnpore three armies in the greatest distress for money; that a mutiny must have ensued if the troops had not been paid at the time they were, and that as Sindia was so near with his army, Oude must have been lost. Neither would it have been extraordinary, if the Mharattas had seized that very treasure which is now the object of this discussion. In short, no human being can form an idea of what the consequences might have been.

It certainly must appear strange to a reflecting mind, when told that all the Gentlemen in India were deceived into a belief that the Begum and her Ministers were hostile to the English in 1781; that no Nujeebs were taken prisoners by Colonel Popham, or any of his Officers; that Captain Williams did not intercept a variety of treasonable Letters from the Begum's Ministers during the insurrection; that Captain Gordon did not lose his detachment through the treachery of their Fougedors; and that the Managers, by reading over certain documents, discovered the mistake. But how much more strange must it appear to me, when I find that the
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making a peace with one Mharatta Chief out of a great many, and a little success upon the coast, had done away all the distresses of the several armies in the field. To me, who have been frequently employed to soothe and exhort the troops to patience and resignation—to me, who felt the distress personally, and saw it in others, this discovery must appear indescribably strange indeed. The proof brought by the Managers in support of the non-existence of State-Necessity, was the lamest and weakest I ever heard or read in any cause whatever. I was in Court when the Manager announced to the Lords, that they were going to prove that no State-Necessity existed, and I must say, I was never more struck with the boldness of any assertion in my life. I could not help remarking to a friend who stood near, that if they succeeded in that attempt, they never need despair of any thing they undertook.

In reading over the proceedings, I turned my attention to one point, namely, to discover whether Mr. Hastings might in his conduct to Cheyt Sing and the Begums be justly suspected of selfishness—Whether he was actuated by a desire to serve himself or the Company. Had the former been his object, he might have amassed immense wealth; he might have lost the country, and have sheltered himself so securely under general orders, and want of instruction, that no accusation could have touched him.

The principal objection made by the Managers, is to the means which he made use of to save his country; but in my opinion, it is not enough for
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the accusers to prove that the means were bad; unless they could shew that the accused had the choice of better. The revenues of Bengal were sufficient for every purpose of government and trade, in a time of peace, but not for a long and complicated war. Money was borrowed of individuals as long as there was any to lend. Bonds bore so great a discount, that it was in vain to attempt a loan. The government of India could not draw bills upon the Company without flying in the face of an act of parliament, beyond a certain amount. To this prohibited resource they were at length driven, and the bill-holders were for a long time in a very uncertain state, with respect to acceptance and payment; and some of the holders obliged to wait for their money much longer than they expected or agreed for. Perhaps it might have looked more noble, if the necessity had been avowed, and the seizure made by our own troops, without the intervention of the Nabob. It would have deprived Mr. Sheridan of the most pathetic and affecting part of his Speech, that of making the son the instrument of punishing his mother. But there are many reasons why that could not be done. It would have proclaimed our weakness to all India, and would have encouraged our enemies on all sides to attack us. The Nabob had a legal claim, either as Heir or Sovereign, to the treasure, which never could in *foro conscientie* be abrogated and done away, without his own consent. His agreement to accept a part, when he had not the offer or power of obtaining the whole, might be
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valid in a Court of Law, but never could be so in conscience; for that would be to support and encourage lawless detention of another's property. There was no way of obtaining the treasure but through the Nabob, and that required management and address. The Nabob was at times for, and at times against the measure; but his objection lay not to the want of rectitude or to the immorality of it, but knowing that the money, when received, would go to the liquidation of his debt to the Company, instead of coming into his own treasure, he became indifferent, and even reluctant.

Mr. Hastings, in his defence, says, that when he had hurt his own reputation, as he conceived would be the case, by permitting the Nabob to resume the Jaghires of his mother and grandmother, and to confiscate their treasures, he was determined not to make that sacrifice for nothing, and therefore directed Mr. Middleton to carry it into execution. He was apprehensive also, that the Nabob would intimidate his parents with menaces, and privately obtain sums of money from them, as the purchase of forbearance. This might have been one of his reasons, but I think not the principal one; he would not have shewn all that anxiety, that uneasiness at unnecessary delay, if that had been his sole inducement. It was my opinion at the time, as it was of every Gentleman whom I conversed with in India on the subject, that it was the extremity of distress which urged him on the measure. It is the only point of view in which Mr. Hastings's conduct appears unobjec-

objectionably reconcileable to reason and prudence. Supposing the relief of the then exigencies of State to be his object, every Letter that he wrote, every instruction that he gave; in short, every thing which came out in evidence, all tend to one and the same point; all the means seem adapted to the end.

At the same time that I do, for my own part, believe these to have been very strong motives for his conduct, I am under no doubt of his establishing disaffection and disloyalty against the Begums, and that their offences were such as to deserve the treatment they received. It is not clear to me, that he will bring the charges home to either of these Ladies, so as to convict them of doing any personal act against the English Government, or the Nabob's; but that deficiency is owing to their sex. Their Ministers, and Fougedars, and their subjects, were notoriously hostile. Principals are always made responsible for their agents.

In a former part of this Letter, I said that the Eunuchs were mostly, if not wholly in fault, and I gave my reasons for thinking so: I still consider them as the real offenders, and the only persons that really suffered by the loss of the lands and treasures.

Our late war with the Dutch originated from the subjects of that State supplying the Americans with military stores, &c. All Sovereigns take upon themselves, if able, to punish those who assist their enemies. This, I believe, is allowed by all who have written on the Law of Nations. Upon this
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ground Mr. Hastings in a great measure rests his Defence against this Charge, though I dare say he will acknowledge, that had the necessity for money been less pressing, he might have been less urgent, and less anxious for the confiscation.

Every person who coolly reflects upon what I have written, may discover the clue which unravels Mr. Hastings's inmost thoughts upon the subject. He had failed at Benares of resources: he meant to press the Nabob for payment of the debt he owed the Company, but he had not settled in his mind the means whereby the Nabob was to raise the money. Whilst his mind remained in this deliberate state, the Begums are accused (and to his mind, satisfactorily convicted) of aiding our enemies. Immediately, whether from the suggestion of the Nabob's Minister, of Sir Elijah Impey, or himself, he determines the confiscation of that treasure which he always thought unjustly detained by the mother from the son. Afterwards, when the Nabob began to trifle with him, Mr. Hastings prest him to the fulfilling of his engagement. If we suppose these to have been Mr. Hastings's ideas on the subject, all the apparent inconsistencies are reconciled; and he just did what all Ministers must do, namely, effect that by address which he could not by a direct command or order.

Great exception is taken by the Managers to Mr. Hastings's suppression of correspondence, and keeping things a secret from his colleagues. The word *Suppression*, like that before mentioned of *Subornation*,

is a word that catches the ear, and imposes on the understanding of those who are not well acquainted with the Company's orders to their Presidencies on this subject. There is no Act of Parliament, nor standing order of the Company, that requires or enjoins the Governor General to lay all his Correspondence of every kind before the Board; nor is there any time limited for laying before them such parts as he is bound to lay before them. There is an order which says, that the Governor General shall *alone* correspond with the Chiefs and Princes of India, but that he shall lay before the Board all the letters (or translates) which he receives, and answer them with the concurrence of the Board. Under this order Mr. Hastings might have corresponded with the Nabob's Minister, and have derived much useful information, without being obliged to make his Correspondence known to the Board. But when, in consequence of a private consultation between Mr. Hastings and the Nabob's Minister by letter, any measure was by them thought expedient, then it was undoubtedly proper that the Official Letter, proposing it as an act of Government, should be submitted to the Board in the manner pointed out in the order above quoted. This I conceive to be the spirit of the order; but neither the word nor the spirit of the order apply to the present case; for Mr. Hastings, whilst out of the Company's Provinces, was himself the Supreme Council, that is, he had no occasion to consult any of his Colleagues with respect to the transactions in the Nabob's dominions:

minions : neither had the Members at Calcutta any occasion to consult his judgement in regard to the Company's Provinces. It was a division of power between the Members of the Supreme Council, whether legal or not I cannot say, neither shall I inquire. After all, if there is any thing wrong in the suppression of Letters, as the Managers call it, the best apology Mr. Hastings can make is, to refer his accusers to the arguments used by our Ministry when they gave Lord Cornwallis absolute powers as often as he thought necessary to use them. The divisions in our Cabinet Ministry would often overthrow all public business, were it not that they are obliged to act in concert or resign ; no such obligation existed in the Supreme Council. But I have shewn, that all the turnings and windings in Mr. Hastings's conduct, all the apparent contradictions, are owing to the opposition he so frequently met with in Council. It is the same in our Parliament, and ever must be in all divided power. The interests of men vary, and thence arise difficulties and obstructions to public business.

If there were a Monarch in India to new-model the Supreme Council every time the Members carried their disputes too far, or so as to impede public business or endanger the safety of the State, there would be no harm in their litigations ; on the contrary, their disputes would operate like the Opposition in Parliament ; it would prevent abuse of authority. But as that is not the case, and as the balance of power was in Mr. Hastings's time always

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shifting from side to side, innumerable evils resulted from it. The fault lay in the Constitution, which is now rectified. But were I to undertake the task, I have no doubt of being able to prove, that every evil complained of, that all the misconduct of the several Presidencies in India, arose from constitutional defects, and want of wisdom in those who planned and erected the system of government; and yet, when we consider the sudden, rapid, and unexpected growth of the English empire in India, we cannot much wonder at observing so many defects in the Constitution. Experience only can discover the best mode of government, and we have not yet had India long enough to find out the best policy.

One evil must naturally arise from this Impeachment, and the consequences may be severely felt in another war. No prudent Governor will hereafter trust to the rectitude of his own intentions: he will not go beyond the prescribed line of his duty; for to whatever extremities he may be reduced for money in peace or war, he must content himself with the ordinary resources of the year. Should his government be threatened by an invading enemy, or by internal sedition, he must look into the Book of Orders, and if he cannot find an approved precedent or rule there, which will apply precisely to the case before him, he must wait till the invaders have taken post in the country, or till unrestrained sedition has diffused itself over every part of it. He would then find that he had nothing left but an obstructed revenue, a weakened credit, and a sinking reputation.

reputation. With these he might save the country committed to his care, if he could. I see but one way of avoiding similar cases of difficulty, nor am I quite certain whether it would answer or not: it is that of permitting the Government of India to draw Bills on the Company in time of war and real distress; for the payment of which the British Parliament should become security. I am of opinion no man will ever lend on bond security again in India. The remembrance of the vast discount, and the terms of remittance, will deter every prudent man from thinking of it. Bills on England, secured in the manner I propose, would get all the ready money from individuals; but whether enough could be obtained in that manner, I know not.

I have heard Mr. Burke spoken of as a very humane man, as one possessed of all the virtues that can render a private character dear to society. For all those qualities I give him entire credit; but when I consider his political principles, I cannot help thinking them detrimental to the interests of his country. I do not allude to the present case, which I consider but as one branch of a great and wide spreading tree. It were easy to trace all, or by much the greater part of his political conduct, up to the republican principles which he avows. Certain causes must produce certain effects; and I do consider it as a very unfortunate circumstance for this kingdom, that a man possessed of such natural and acquired endowments, should entertain the principles he is

known to do. He has been in the minority much the greater part of his parliamentary life, where he seems to have opposed upon the true principle of opposition, namely, that the Minister must be always in the wrong. I have heard that he wrote a book, to prove that a bad administration must and should be opposed in every measure, with a view of overturning it. Supposing this principle to be just, who is to decide on the goodness or badness of administration, and to determine what administration should be supported or opposed? I never saw, though I have often wished to see this curious performance; I speak from report only. To these republican principles I impute in a great measure the loss of America, and all the changes which have happened of late years in the connection of Ireland and Great Britain. The connection is undoubtedly weakened, or at least stands upon a different footing to what it was before the American war. To these same republican principles I impute the present impeachment, but at the same time I do not condemn Mr. Burke, or any other member of opposition, for entertaining them; I only lament it. If Mr. Burke is convinced that his principles are right, he does well in acting under them; but if he thought with me, that the doctrines which he maintains have already lost us one country, and broke a link in the chain which holds us to another, and that they must ultimately endanger, if not lose to us our possessions in the East, he would undoubtedly change his conduct. I by no means insinuate that Mr. Burke intentionally would injure his country,

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for I see many reasons why he should not entertain such a wish, and none why he should; but I think him mistaken as to the mode of serving it.

An attentive reader of what I have written, might ask, How comes it that the Nabob is so very much under the influence of the English Government?

To explain this briefly, you must know that Asoph ul Dowla is by nature extremely weak, indolent, and inactive. Soon after the death of his father his troops mutinied, and it required the assistance of an English Brigade to subdue them. There is no doubt but this mutiny arose from the Begums detaining the treasures left in the Zenana, and which have proved to be the foundation of this impeachment, or at least of this article. This detention of the treasures compelled the Nabob to accept the hard conditions imposed upon him by the Supreme Council in 1775, viz. the relinquishment of Benares and Ghazepore to the Company, and the increase of the monthly subsidy for the pay of the troops.

The next consequence was, that the Nabob applied for English officers to command his own troops. They were granted him. In a short time these troops were formed into a temporary brigade, paid by the Nabob; and soon after, the duty of the temporary brigade was done by detachments from the Company's brigades. The name temporary was done away, and with it all their dependance upon the Nabob, their master. In this gradual way, the Nabob lost his army. It began in 1776, and was brought into its last stage in 1779. It has remained so
ever

ever since. But this is not the only way in which the Nabob was stripped of his authority. But to explain the other will be rather difficult, without giving some previous account of the mode of paying public debts in India. When a Nabob owes a sum of money, he frequently gives a Tuncaw, or assignment of some part of his revenue for that year, just as if you should suppose our treasury board to give the King of Prussia an assignment of the land-tax of Wales to pay a subsidy, or the hire of his troops.

OR The collecting of the revenue gives a vast influence to Tuncaw holder over that country, particularly in India, where collections are usually made by an armed force, and not in a peaceable manner, and by equitable assessment, as is practised in England.—To pay the temporary brigade, and another brigade of the Company's stationed in the Nabob's dominions, together with all the civil establishment at Lucknow, and a subsidy annually remitted to Calcutta, required near half of the Nabob's revenues. The resident at Lucknow received the Tuncaws, and the Aumeels, under his inspection, made the collections: the consequence of which was, that the resident's influence was almost irresistible. Being thus deprived of his army, and part of his country, it was not in the Nabob's power to dispute the pleasure of the English Government. If it be said, that the Supreme Council did wrong in thus tying up the hands of the Nabob, Mr. Hastings will say that General Clavering, Mr. Monson, and Mr. Francis, laid the foundation, and he built upon it. If the principle of this
incroach-

incroachment be attacked as immoral and unjust, the accusation will be against human nature. There neither is, nor ever was, and probably never will be, that state which would not take advantage of a weaker one if it could. France, England, and Prussia have done the same with Holland, as far as it lay in their power, ever since it was severed from Spain; and though neither of these powers have yet subjugated that republic, the forbearance is not owing to clemency, but to the jealous eye of their neighbours, who watchfully endeavour to keep up the balance of power. Poland affords a recent example of the natural propensity Sovereigns in general have to increase their own territories, and to diminish those of their neighbours. If the gaining of this ascendancy in the Councils of the Nabob be unjust and blameable, it may be said in favour of Mr. Hastings, that he pursued the steps of his predecessors in India, and the example of all the statesmen in the world.

Except in the present instance, I believe there is not a case to be found in the history of the world, where a Governor was brought to trial for consulting the interest of his employers too much, and their allies too little.

The fault generally imputed to our ministers is, that in their continental negotiations, the advantages are against them; but in the conduct of the Company's servants, the objection is quite the reverse, and that the advantages are too much for them. What shall we say then, or where shall we draw the line?

line? Or how shall we determine upon what is right and wrong in political questions? One principle we have to go by, which I have never yet heard controverted, namely, that you should love and serve your country; but the defect is, that the boundary of this love to our country is not fixed: you may do too much as well as too little.

Having now given the outlines of this article of impeachment (for I do not pretend to say that I have entered into every aggravating item and allegation, which would be tediously unnecessary) I shall just recapitulate the principal points, upon which the decision will ultimately rest.

The first question is, Whether the treasure left by Sujah Dowla was the property of the widow or the son?

To that I answer, that it could not be the widow's—it might be the son's, as a succeeding sovereign, or it might be his proportionally, according to the Mahomedan law of distribution. But it is to be observed, that in the latter case, all the debts of the deceased must have been paid before any distribution took place. The arrears of the army, and the debt to the Company, would have swallowed up a million and a half, which is much more than has yet been recovered from the Begum.

The second question is, Whether the Nabob's accepting a part, and giving a release for the remainder, guaranteed by the Company, can in *foro conscientie* confer a right on the mother, which she had not before.

This

This is a matter of conscience, and different men will give different opinions.

The third question is, Whether the information Mr. Hastings received respecting the Begum's assisting Cheyt Sing in his rebellion, is a ground of justification for without drawing the guarantee, and urging the Nabob to take away the disputed treasures, and commute the jaghires for an annuity of equal value?

The fourth question is, Whether a State necessity did exist in India at the time, or whether it were strong enough to have justified a violent usurpation of private property, even though the Begums had done nothing amiss?

These are the principal points upon which this article depends. It may be argued and decided upon any of these grounds separately, or upon all collectively; but the Managers have so loaded the proceedings with extraneous matter, that people who have not all the documents before them, or are unaccustomed to laborious investigations, are totally led away from the main point. I do not mean, that the Lords are led away, for they are in possession of all the printed evidence, and I suppose the speeches also, but I mean the audience in the gallery, who hear and attend to those parts only which rouse their passions. If Mr. Hastings did right in withdrawing the guarantee upon either of the grounds I have stated, it will be ill worth while to inquire into the means whereby he prevailed on the Nabob to execute, or the manner in which the confiscation was executed.

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Mr.

Mr. Sheridan is a very judicious advocate for any side of the question he takes up: in his speech he touched but slightly on the question of right, but seemed to rest his hope of success on an appeal to the passions. For this reason he played the same game as Mr. Burke did in the opening of the impeachment. He contrived to make the House of Commons believe, and he endeavoured to make the Lords think the same, that all the distresses which the Ladies of the lesser Palace suffered, were in consequence of seizing the Begum's treasure. But they are circumstances totally unconnected, and perfectly independent of each other. The former did not derive their support from the latter, nor was it fit they should. A wife is a very improper trustee for her husband's mistresses and natural children. The Ladies of the lesser palace derived their maintenance from a jaghire or assignment, through Letasat Ally Cawn, and it was from his deception or failure, that they suffered inconvenience and distress; but it cannot be supposed that the time in question was the only time that he disappointed them. No doubt it happened often, though not known to the English. Neither would the Nabob suffer any English gentlemen to say a word about these women, for he was highly offended with Major Gilpin for mentioning them in his letter to the resident. And I can speak from my own knowledge, that according to the customs and etiquette of the country, there was great reason for offence. Major Gilpin acted as every humane man would do; but the Nabob did not relish that

that species of humanity; neither would any Mussulman have liked it better. Mr. Sheridan in like manner has expatiated on the sufferings of the Begums.

But after all, when we bring it down to common life, and compare it with things to which we are all accustomed, it amounts by comparison to this only: A Lady of very high rank, next to Royalty, a Duchess for example, at the death of her husband gets possession of all his ready money, bills, bonds, &c. to a very large amount; she refuses to divide with her son, and keeps it all upon the plea of right, a right founded on possession and nothing else. The son does not choose to go to extremities with his mother, and borrows as much as he can, with a promise, not a design of repayment. At last he gives way to over-ruling persuasion, almost amounting to compulsion, accepts a farther sum, with a remission of what he had already borrowed, and renounces his claim to the remainder. Afterwards, the party that in a manner compelled the compromise, withdraws his influence, and the son, considering his claim no longer barred, takes from the mother what he ought to have had years before. Where is the injustice in this? Not where the MANAGERS place it. It lies in Mr. Bristow, who made such bad terms for the Nabob, and if he did not make better for himself, it would reflect on his judgement; and in the Begum, who would not divide her husband's property with his son. In those two lay injustice, and in the Nabob lay extreme folly, unless he went upon a supposition that he could still make it his own by loan, or seizure, when he liked.

This is the true state of the fact, when stripped of its colours. But to make it strike forcibly on the minds of the people of England, the Begums are called *Princeſſes*, which they really are not. I ſaid in the beginning of this letter, that *Begum* ſignifies *Queen*; in that I followed the authority of MENINSKI; but I have either heard from the natives of India, or ſeen in ſome of their Dictionaries, that *Begum* is the feminine of *Beg*. *Beg* is a common Mogul title, ſynonymous to Lord. But be this as it will, there is nothing royal either in the Nabob or his parents. Caſes full as hard as this happen very often in our Courts at Weſtminſter. If my mother detained my property by force, the Judges would decide as between *A.* and *B.*; and if I made out my claim to their ſatisfaction, they would ſend their officers to break open my mother's locks, and put me in poſſeſſion of what ſhe might be unjuſt enough to withhold: and though I might have given my mother a deed of renunciation for the whole, upon receiving only a part, yet equity would annul that deed, if I could prove that it was obtained from me by any undue influence or improper means. It is true, a long examination took place, to ſhew the Court that great cruelties were made uſe of in getting poſſeſſion of the treaſure. The Eunuchs were imprifoned and put in irons, I grant, but the irons were more afflictive to the mind than to the body; for in regard to what they really ſuffered in their perſons, there are at this hour many debtors in the King's Bench, and other gaols, who ſuffer infinitely more than they did, and have much more
cauſe

cause for complaint. Besides, they might have been released at any time, by paying the stipulated sum. It is well known that it was in their power to have done it at any time; and there are insinuations in some of their correspondence with the Begum, whilst in confinement, that would lead one to think they could have discovered much more than they did. But I do not see how Mr. Hastings can be answerable for the means made use of to recover the money: it was all done by the direction of the Nabob, who knew the proper method much better than any Englishman could do.

Mr. Hastings must be considered in the same light as a Judge is here. The Judge must take care that judgement is not illegally granted against my property; but in the execution of the judgement, the Judge is not concerned, nor will he inquire into it, unless I complain by some kind of suit against the Sheriff or his officers. Every thing the Begums or the Eunuchs suffered, was owing to their resistance. But it would be the same in this country; for if the execution of a judgement be resisted, the Sheriff will assemble a body of men and wage war with the defendant. Such was the case with the Begum, *mutatis mutandis*, that is, when we make the necessary allowances for the difference in the laws and customs of the two countries, and consider also the rank of the parties. The method adopted was the only one. No Judge could decide between the Nabob and his mother; the former was unavoidably, what no man should be, the arbiter of his own cause; he was the execu-

executing officer of his own sentence. The truth is, he was above the law of the land, but we may still examine his conduct by the laws of Indostan, and the law of reason. The question then is, Did the Nabob do more, or was he advised to do more than a *Cazy*, that is, an Indostan Judge, or an English Judge, would have awarded in a like case, between individuals whose rank had subjected them to legal determination?

This last question can be answered by those only who have made the Mahommedan law their study. But though I have looked into the books upon this head, I have not materials enough to form a decided judgement upon the right, with respect to Mahommedan laws and customs, and must therefore leave it to better-informed men. I mean, I am not certain whether the treasure left by Sujah Dowla was state property or private property; but I am certain Mr. Sheridan's *Zenana* law has no existence but in his imagination. My doubts are confined to the two former suppositions, whether the son ought to inherit the treasures in capacity of Sovereign, or to follow the laws of the *Coran*, and take the same share as a private individual would have in a similar case. Were I the advocate of Mr. Hastings, or inclined to throw a ridicule on the doctrine of his accusers, I might say, that they have erected not only a *linguafactory* of characters, but a *linguafactory* of laws also.

The more I reflect on the nature and incertitude of State criminality (and I have been led to consider

it a great deal, during the writing of these letters), the more I admire our own Constitution, and congratulate our Ministry upon their having the legislature at hand, to consult upon all occasions. If they have no rule or political custom to guide their conduct, they can call together both Houses of Parliament, and make a law for the emergency. But in India, the Supreme Council must act from their own discretion in all extraordinary cases, and trust to chance for approbation or condemnation. I say trust to chance, because, as the understandings, passions, and interests of men vary, so will their decisions upon one and the same action differ in the like proportion. The only method, in my opinion, whereby we may safely judge of the conduct of a Minister of State, or Governor of a Province, is that adopted by physicians, when they inquire into the practice of each other.—First, What was the disease? Were there more remedies than one? Did the practitioner take the safest and the best? Supposing there were but one remedy, were there more danger to be apprehended from the remedy than the disease?

This rule would bring Mr. Hastings's case to a narrow compass. Did a political disease exist? Had the State Physician a choice of remedies? Did he take the best or only one in his power? Was the remedy or disease most likely to prove fatal to the constitution of the patient?

No man can ever form a proper judgement on Mr. Hastings's conduct, who does not first make himself master of the subject, and then ask himself
this

this question—Could I in the same situation, all circumstances considered, have acted better? After all, if it can be made appear, that his motives were in any degree selfish, or originated from any of those base passions which disturb and disgrace the human mind, no man would be more ready to condemn him than myself, and I believe all mankind will join in the opinion.

Since these Letters, written originally for the reasons formerly stated to the public, were delivered to the Printer, I have read Mr. Erskine's speech in defence of *Stockdale*. I have heard that it was taken down very correctly, I shall therefore consider it as genuine. It certainly is replete with sound arguments, but I am not going to add to the many panegyrics already and deservedly paid to that masterpiece of elocution—that Gentleman's fame, as an Advocate, requires no trumpet. But what I admire infinitely more than all he has said, or possibly ever will say as an orator, is the generous part he has taken in the concerns of Mr. Hastings. He is not the advocate of the accused, but the advocate of the cause of justice, that is, what he conceives to be the cause of justice. In all other political questions, he is the decided and zealous partizan of opposition. He acts in concert with the accusers; yet in regard to the impeachment, he totally departs from them. He avows it publicly and privately.

I have heard the change of sentiment in Mr. Pitt, upon the question of impeachment, offered as a proof of guilt. I have heard it said, that nothing but conviction

viction could have induced the Minister to take the part he did. God forbid that I should impute any other motives to Mr. Pitt than internal conviction; but I certainly could figure to myself other motives for Mr. Pitt's conduct; that is, I think I could point out political reasons, which might have their weight in most understandings. But with respect to Mr. Erskine, I can see many political reasons which might induce that Gentleman to act against Mr. Hastings, but none that could induce him to speak in his favour; I mean no political reasons; and therefore when I hear of Mr. Erskine's speaking on the subject in the manner he did at Westminster Hall, I must conclude that he was actuated by the noblest principle of the human mind, namely, the consciousness of what is due to injured innocence. If I am right in my conclusion, his conduct on this occasion does infinitely more honour to his heart than all his eloquence, great as it is universally allowed to be, can possibly do to his head. I am totally unknown to Mr. Erskine, and he is equally unknown to me, except by his fame and reputation. After having said thus much in regard to the man, I must take notice of some parts of his speech, which, however pleasing they may be to Mr. Hastings and his friends, do not meet my ideas at all. The parts I allude to are pages 85, 6, 7. In one part of page 86, Mr. Erskine says, "It may and must be true that Mr. Hastings has offended against the rights and privileges of Asiatic Government, if he was the faithful Deputy of a Power, which could not main-

“tain itself for an hour without trampling upon
 “both. He may and must have offended against
 “the laws of God and nature, if he was the faith-
 “ful Viceroy of an empire, wrested in blood from
 “the people to whom God and nature gave it.”—I
 need not quote more, for the whole page, and part
 of the next go on in the same stile.

Mr. Erskine would not have said this, had he
 read diligently and attentively the histories of Indos-
 tan since the first Mahomedan invasion. The go-
 vernment of the India Company has been lenient in
 the extreme, when compared with the best Mogul
 Emperor that ever sat on the throne. Nay more,
 I would undertake to prove, that no one act of Mr.
 Hastings's government that I ever yet heard of,
 was worse, more tyrannical, or unjust, than is done
 by every legislative power (whether in the hands of
 one man or many) repeatedly, and almost unob-
 servedly. This may be thought a very bold asser-
 tion, but it is a very true one. The expulsion of
 Cheyt Sing and the rebellion at Benares arose from
 the same cause as the American war; namely, re-
 sisted taxation. The taxing of Cheyt Sing was as
 politically necessary as the taxation of America, and
 in my opinion much more so. Parliament was an-
 swerable only for the principle upon which they taxed
 America, the rebellion followed in consequence.—
 Mr. Hastings is answerable for the principle upon
 which he taxed Cheyt Sing; the rebellion was, like
 the other, an unexpected and unforeseen conse-
 quence. The taking the treasure from the Begum
 must

must be considered by all those who think the Nabob was unjustly kept out of his patrimony, as an execution, like those which Mr. Erskine sues out daily for his clients at Westminster. But those who think that these Ladies ought not to possess jaghires, and intrust them to their eunuchs, will think the resumption politically necessary, and similar to our government's getting by commutation the sovereignty of the Isle of Man. Those who think with Mr. Hastings, that they aided our enemies, will conclude that the confiscation was just, and grounded on the law of nations.

Whatever is done by a Parliament, we are apt to consider just and equitable, in general, not always; but there being no appeal, the subjects must acquiesce, let them think what they may. But I wish any man to reflect, and put to himself this question—If what is done by the Three Estates were done by the Cabinet, should I not call it arbitrary and iniquitous? What can be the reason of this difference? It consists in this; we are in the habit of submitting to our divided legislature, and we think nothing can be right that has not the sanction of King and Parliament; but had we been bred up under a legislature less extensive, we should have looked for no other sanction. But there are two ways in which acts of government may be considered:—First, whether they conform to rule and custom; that is, whether the acts of government are performed by those who have a prescriptive and constitutional right to perform them? And secondly, whether those Governors

acted discreetly, and had public good for their motive? If either of these fail, the act is wrong. In the former case, a regular fixed legislature cannot fail, but it may in the latter. With respect to the Supreme Council, both may be doubted; that is, whether they can justify deviation from rules, or the acting legislatively or discretionally, upon the spur of the occasion, or not. And also, whether, supposing them possessed of that right, they did act discreetly and usefully or not? I say, that the Supreme Council at Calcutta may be attacked on either of these grounds.—You may say, they had no right to use extraordinary means to meet extraordinary occasions. You may say, the means used were more oppressive and unjust than they need to have been. To apply this reasoning to the present case, I say, that if Mr. Hastings had a right, or is justified in using extraordinary means to raise supplies for the war in India, that the means were intentionally as innocent and good, as any means that are used in this country, in the raising of the annual supplies in time of war. People, in judging, consider the agent more than the act. They say, who is this Mr. Hastings, that taxes Princes, and acts thus from his own discretion? I should answer, were I present at the question—He was a Viceroy, ordered to preserve a large country to the empire of Great Britain, whose constituents forgot to point out to him some legal method to raise extraordinary supplies for extraordinary occasions. This Viceroy acted from his own judgement: he took what he thought the best method,

thod, but his judges think he was wrong; but they never have yet told him what he ought to have done. By his judges in this case, I mean the House of Commons. It is a question I have a thousand times asked; I have put it to Lords, Commons, and private individuals, but I never got an answer to it yet, that I could understand—Q. If Mr. Hastings acted wrong, what ought he to have done?

Mr. Erskine was certainly wrong in his admissions, and that I could demonstrate to him, were I in habits of intimacy with him; and were we to discuss the evidence on the Benares and the Oude charge, coolly and deliberately together.

I have now done with this charge, and shall proceed to that of the Presents.

LET

LETTER IV.

THIRD ARTICLE *of the* IMPEACHMENT,

THE

PRESENTS.

I AM now going to treat of the Third Article brought to trial, though it is numbered the Sixth in the catalogue of charges. The subject of this article is the receipt of presents, which seem to be divided into two heads: the first is the concealed Presents, as the Managers call them, and of which Mr. Hastings denies the receipt. The second is the avowed presents; that is, such as Mr. Hastings admits having received for the Company's use.

Now you are to know, that an act was passed in the year 1773, and took place in September 1774, which prohibits the reception of Presents; that is, it declares that no servant of the Company shall receive any donation from a native of India; and that if any gifts or presents are received, they shall be paid to the Company, and considered as having been

been received for their use. I have not the act before me, and therefore cannot state the words; but the construction put upon the act was, that no individual could receive money by way of gift, for his own use, but that he might do so for the benefit of the Company. There is certainly an obscurity in the wording of the act, which is corrected by another passed in 1784: I mean, that the obscure clauses are cleared up; and it is declared, that no Present shall be taken either for the use of the individual or the Company.

, By the act above quoted, that clause in the preceding act, which subjects the receiver of presents to certain penalties, is repealed, and cannot operate, unless the suit was actually commenced previous to the 1st of January 1785. I state this, because the Managers, by their own construction of the act of 1773, consider Mr. Hastings as criminal, for having received presents avowedly for the use of the Company. In this case it is observable, that what Mr. Hastings considered as meritorious, by his construction of the act, the Managers consider as criminal, by their construction of it; that is, the former thought he might legally accept presents for the Company's use, and the latter think that he could not. This is a very nice and subtle point of law; but surely if there be any thing wrong in this, it must be imputed to those who penned the act; for, if it were meant to exclude the Company, they should have said *neither for the use of himself or of the Company*; or they should have said, that neither the Company,

nor their *servants, shall receive presents from the natives.* There could then have been no mistake. I should think the Managers will not insist on this point; but if they do, and the Lords agree with them in the construction of the act, Mr. Hastings must be found guilty; that is, he will be found guilty of being a bad lawyer, but not guilty of having acted intentionally wrong.

In treating of these presents, I shall begin with those which the Managers call the concealed Presents, and I shall, as I have done in the former charges, extract the substance of the accusation and the defence: you may form some idea of the complexity of this article, when Mr. Burke was engaged three days, and part of the fourth, in opening it in part only. There is one thing in his opening which I cannot pass over, though it is in fact irrelevant to the charge. It happened, that some time before the House of Lords proceeded to the trial in April last, the natives of India sent over a great number of petitions and memorials in favour of Mr. Hastings. Mr. Burke got hold of them, and in order to do away their effect, he desires the Lords to *consider those who signed the petitions, as people that are forced to mix their praises with their groans; forced to sign with their hands that had been in torture; while yet warm with the thumb-screws upon them, forced to sign his praises; and that will, I hope, give your Lordships a full and satisfactory proof of the miseries of these poor people.* You have often heard me express myself with much indignation against all orators, from
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Demosthenes down to the present moment. The more I read, the more I hear of what is called eloquence and oratory, the more I detest and despise it. Could Mr. Burke possibly believe what he said, or was it only a figure to divert the ladies? I dare say there was not one man who signed the petitions, that ever wore a thumb-screw in his life; but if they had, how could Mr. Hastings in England, or his friends in India (if he has any there) force the injured natives to sign petitions in favour of the accused, while Lord Cornwallis is Governor General? Mr. Hastings had no interest in India among the natives, at the time the petitions were signed. Is not this enough to destroy the credit of every thing Mr. Burke has said upon the business of the impeachment? It may be said, that orators must be allowed the privilege of amplification; but how shall the hearer know what deductions he ought to make on the credit side, unless the speaker were to furnish him with a table of ratios and discounts. You may, perhaps, think this a ludicrous idea, but I am really very serious. It is very necessary that every accuser should be prevented from aggravating, or that he should give in his scale of aggravations, otherwise the criminality of the accused must vary according to the different degrees of elocution in the accusers.— To illustrate this, the same offence which in the mouth of Mr. Grey would be brown, in the mouth of Mr. Adam would be dark, and in the mouths of Mr. Fox, Mr. Burke, or Mr. Sheridan, would be as black as charcoal.

It is necessary to premise, that when I may have occasion to speak of the Nabob, I mean the Nabob of Bengal, named Mobarech ul Dowla, and not the Nabob of Oude, who are as distinct persons as the Kings of France and Prussia : and that when I speak of the Begum, it is a lady totally distinct from those I spoke of in my former letters. The scene hitherto has lain in Oude, and the vicinity of Oude, which are not provinces belonging to the Company, but to Asoph ul Dowla, Subahdar of Oude, though the influence of the Company was and is very great throughout his dominions. But the scene now lies in the Company's provinces, viz. Bengal, Behar, and Orissa.

I formerly explained the meaning of Dewan and of Dewanny. The former is the Collector, the latter the collection of the Revenues. I shall not give a detail of the means whereby the Company fixed their authority in Bengal, nor carry my inquiries farther back than to the year 1757, when Lord Clive obtained from the Emperor the Dewanny of the three provinces for the Company. It was then settled, that the Emperor should have a tribute of 26 lacks, and the Nabob of Bengal 50 lacks of rupees annually. Though Lord Clive had thus obtained the Dewanny, the collections were made, not in the name of the Company, but in that of the Nabob, whose Deputy or Prime Minister was Mahomed Reza Cawn.

About the year 1770 or 1771, one of the Directors received information of some misconduct in Ma-

Mahomed Reza Cawn, and a resolution was formed to remove him from his office, and to make a strict inquiry into his behaviour.—For this purpose, amongst others, they removed Mr. Hastings from his seat in the Council of Madras, and appointed him President of the Council of Bengal.—I have in the former charges spoken of Mr. Hastings by the title of Governor General, but his rank was that of President only, until the year 1774.—The distinction is more nominal than essential, but I mention it to avoid confusion.

In the year 1772, Mr. Hastings succeeded Mr. Cartier; and soon after he had taken possession of his office, he deprived Mahomed Reza Cawn of the Regency, in consequence of the express orders he had received from the Court of Directors. But as by that deprivation, the young Nabob, then a minor, was left without a guardian, it became necessary to fill up that office. But the question was, who was the most eligible: the choice fell upon Munny Begum.—This lady, whatever she might have been by birth and parentage, was of great importance in the country, long before the English had established their authority in India.—She was the favourite wife of the Nabob Jaffier, who appointed her son to be his successor in the Subahdary. It is in India as it is in England, a man may raise a woman up to his own rank, though a woman cannot elevate a man. Mr. Burke was very violent against this appointment; but the very reasons which he assigned for her ineligibility, were the very

sions which induced the President and Council to elect her, and the Court of Directors to approve their choice.

Mr. Burke contends, that as she was a woman shut up in a Seraglio, or Zenana, she was incapable of transacting public business. So she was : but it was intended that her Servants or Ministers should be under the influence and controul of the Presidency at Calcutta. To have appointed the young Nabob's uncle to the office of Guardian, would have exposed the person of the minor to great danger, and the state to many inconveniencies. Mr. Hastings, in a Letter to the Directors, gave so many and so very strong reasons for the choice he had made, that they expressed their satisfaction in the most decided manner.

By making it appear that this woman was wholly unqualified for the trust, Mr. Burke endeavours at making the Lords believe that her appointment was purchased from Mr. Hastings.—Whereas the true state of the case is, that it was the wish of the Directors, and the object of Mr. Hastings, to establish the doctrine of passive obedience and non-resistance in the Nabob's Court, and not to introduce a person into authority, who might seek occasion to turn it against themselves.

Mahomed Reza Cawn, who, as I mentioned before, was Deputy Subahdar from 1765 to 1772, was now deprived of his office, and taken from Morshedabad, the seat of the Nabob's Government, to Calcutta, where he was kept for some time. In the

the interim, Rajah Gourdas, the son of Nundcomar, was appointed Deputy Dewan, whilst Munny Begum had the care of the Nabob's person and household.—In the appointment of Rajah Gourdas, Mr. Hastings seems to have relied much on the abilities of his father, Nundcomar, whom he endeavoured, though with very little success, to make instrumental in the discovery of the misconduct of Mahomed Reza Cawn. This degraded Minister stood accused of causing, or increasing a famine, by the monopoly of rice, and also of various other misdemeanours. A reduction was at that time made by order of the Directors, of the annual expences of the Nabob's household, down to 16 lacks of rupees. The disbursement of this sum was under the inspection of Munny Begum, in consequence of her becoming guardian to the young Nabob's person. The alteration took place in the year 1772, at no great distance of time after Mr. Hastings succeeded to the Presidency of Bengal. But two years afterwards, a very great change was made in the Government of India.

By Act of Parliament, passed in 1773, and which took effect in 1774, the President and Council were done away, and a new Administration was formed, consisting of a Governor-General and four Counsellors. It took the name of the Supreme Council, and was entrusted with much greater powers than the preceding Government had been. Mr. Hastings and Mr. Barwell were the only two in the Supreme Council who had made part of the last Administration :

tion :—three Members came from England, viz. Sir John Clavering, Mr. Monson, and Mr. Francis. They arrived in October 1774, and immediately discovered a disposition very inimical to Mr. Hastings. The Court of Directors had given orders to the Supreme Council to inquire diligently into the mal-practices of their Servants in India, and this task the new Members zealously engaged in.—Accordingly, in March 1775, about five or six months after their arrival in India, Mr. Francis introduced to the notice of the Board a long paper from Nundcomar, stating, among a variety of other matter, that Mr. Hastings had received from himself (Nundcomar) a lack of rupees, for appointing his son, Rajah Gourdass, to the office of Deputy Dewan, and another lack from Munny Begum, for appointing her guardian to the minor; and also a lack and a half more from the same Lady, by way of entertainment, for the same reason. Two days after the delivery of the above-mentioned paper, Mr. Monson moved that Nundcomar should be called before the Board, and examined upon the contents of the Letter he had written. Mr. Hastings saw through their intention, and resolved not to subject himself to a personal insult. He proposed to his colleagues to form themselves into a Committee, and to examine his accuser as much as they chose; declaring at the same time, that he would not degrade himself by appearing as a criminal, where it was his right to preside. Though this would have answered every purpose of investigation, had that been their only

only object, yet the majority rejected the proposition. By the majority I mean Sir John Clavering, Mr. Monson, and Mr. Francis, who upon most questions divided against Mr. Hastings and Mr. Barwell. I never yet heard any satisfactory reason assigned for not examining Nundcomar in a Committee. It is probable they may have had many reasons, but the only two that suggest themselves to my mind, are these: First, it is likely they wished to mortify the Governor General, and to convince all Indostan of their own superiority. And secondly, to strengthen Nundcomar's evidence, by their observations upon Mr. Hastings's conduct during the examination. These are reasons of my own suggestion, I by no means vouch for the truth of them. They could hardly expect that Mr. Hastings would submit to be insulted by Nundcomar; and I believe there is no man of common spirit but will approve of Mr. Hastings's conduct in this refusal. As the majority persisted in calling in the accuser, the Governor General dissolved the Council, but they voted the dissolution illegal, and continued to sit. They called Nundcomar, and examined him, so that they obtained all the information they could have had, had Mr. Hastings sat by all the time of the examination.

About this time disputes ran very high among the Gentlemen of the Supreme Council, and one Member carried it to a great length indeed. The Board, that is, the majority, ordered a confidential servant of Mr. Hastings, named Cantoo Baboo, to attend them. He consulted his master, who bade him not

go: he was summoned again, and went. General Clavering finding that his disobedience was in consequence of the prohibition of the Governor General, moved to have him put in the stocks. Cantoobahoo was, by his office, the first native in Calcutta, and of so high a cast as would have rendered the punishment worse than death.—The General defended the propriety of the punishment, by saying that Mr. Hastings had ordered some of the lowest wretches in the country to be put in the stocks for acts of uncleanness and of public nuisance. The General must have known, that the blame was due to the master, and not to the servant; and that such a punishment to such a man, was equally as bad as it would have been to have taken an Officer, and flogged him in the front of his regiment. I mention this, not as pertinent to this charge, but merely to show the acrimony of party at that time, and as a strong proof, that their principal object was to humble and mortify Mr. Hastings. Nothing but that determination could have urged General Clavering to think of so severe a punishment for so trifling an offence. Mr. Hastings acted in this case as he did in the former; for he declared his resolution to protect his servant at the hazard of his life. One of the Members, apprehensive of the consequences, moved to adjourn, and I believe there it ended.

To return to the Narrative.—In the May following (1775), the Board deputed Mr. Goring to examine the disbursements of various sums in several departments at Morshedabad, and to deprive Mun-

ny Begum of her office and authority: I mean that which had been conferred on her in the year 1772, by the former Administration. Among other powers granted to Mr. Goring by the majority, was that of removing the Begum from her Zenana, and placing her in some other house in the neighbourhood. There is an expression in one of that Gentleman's Letters, which is of so curious a nature, that though it is foreign to my Narrative, I cannot pass it over. It seems that the Begum hinted to him, that there were Courts of Justice at Calcutta to redress the injured; upon which he proposes to the Board, that the confinement of the Begum's servants should be done in the name of the Nabob; the intention of which was to avoid the danger of being made personally answerable for the oppressions he was about to commit.

I must here recall to your mind the Zenana doctrine preached up by Mr. Sheridan, in the former article. It was then sacrilege to touch, nay to look into the Zenana of a woman of rank. That may be the opinion of Mr. Sheridan now, and also of Mr. Francis, but it could not have been the opinion of the latter, when he entrusted a young man with an absolute power over the person of a Lady of the first rank in Bengal. With this power in his hands, and by threatening the Begum to make use of it, he had the mind of the Begum perfectly under controul; it was not putting her person on the wheel, but it was putting her mind on the rack. By these and such like means, Mr. Goring prevailed on the

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Begum to declare that she had expended a lack and a half of rupees on Mr. Hastings's entertainment, while he was at Morshedabad. Whether Mr. Hastings acknowledges the whole, or any part of this sum, I know not; for that we must wait till we hear his defence. It is, however, the custom of the country, when one Potentate visits another, to defray the expence of his visit; and had the Nabob visited Mr. Hastings at Calcutta, an expence would have fallen on the Company. It is a long established custom; and this transaction was prior to the Act of 1773, which prohibits the receipt of presents.

I think I have now stated all that is necessary to be known by those who are not ultimately to decide upon this question. The charge is, that Mr. Hastings received three lacks and a half of rupees, for the appointment of Munny Begum and Rajah Gourdas to their several offices. The allegations are supported by the extorted sayings of Rajah Gourdas, the voluntary accusation of Nundcomar, and as far as one lack and a half, by the extorted word of Munny Begum, who says, that while Mr. Hastings was at Morshedabad, he received two thousand rupees a day, according to the established custom, in lieu of provisions; but beyond that she had not given a single cowry.

But the greater part of this evidence, loose and vague as it is, was held by the Judges of so inadmissible a nature, that the Managers could not prevail on the Court to let them read it. Mr. Hastings's defence is not yet given in, so I cannot take
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upon me to say what is proved and what is not. What I have already stated, is the substance of all that could be offered in evidence, even if the Prosecutors were allowed to read every thing.

Mr. Burke, in the course of bringing forward this Article, laid great stress upon the declaration of Nundcomar, and laboured hard to infer guilt from Mr. Hastings's refusal to confront his accuser. He imputes that conduct to fear, and consciousness of guilt, which other people impute to a manly spirit and just sense of his own dignity.

However, as the execution of this man formerly made a great noise in England, and as it furnished matter for an intended Impeachment of the Chief Justice who tried him, I will give a brief account of this extraordinary character.—In the time of Meer Jaffer, he was Deputy Subahdar, or Prime Minister: after the death of the former, Mahomed Reza Cawn succeeded to that appointment. It is very natural to suppose, that Nundcomar must and would resent his degradation. When he heard that Mr. Hastings was about to succeed to the Chair of Bengal in 1771, or in the beginning of 1772, he sent Letters to him at Madras, in the names of Yuram ul Dowla, the Nabob's uncle, and the Munny Begum. The Letters were filled with invectives against Mahomed Reza Cawn, and recommendation of himself. Mr. Hastings afterwards found that Munny Begum had no knowledge of these Letters, and that they were a forgery of Nundcomar's. He had been convicted also of making

false accusations concerning the receipt of presents in the time of Lord Clive's government. It may be asked, why did Mr. Hastings employ a man of so infamous a character? The answer is, that he gave up his own will to the commands of the Court of Directors, who thought that Nundcomar's having filled the office himself in the time of Meer Jaffier, would qualify him for the discovery of the mal-practices of his successor. Their hopes lay in the active malignity, as they express it, of this man. They expected he would bring to light the embezzlement of very large sums, and therefore enjoined Mr. Hastings to make use of him in that way. The Court of Directors were disappointed, for after a full investigation, Mahomed Reza Cawn was acquitted, and Nundcomar imputed his failure to Mr. Hastings's not supporting him, as he wished. But the powers which he wanted, were such as could not be granted in any State. His hopes of succeeding to wealth and honour being thus blasted, Nundcomar turned his thoughts to revenge, and the disposition of the majority towards Mr. Hastings afforded him an early opportunity. Here you perceive the origin of this accusation against Mr. Hastings for bribery.

In the course of the trial, Mr. Burke declared, that if Mr. Hastings attempted to invalidate the testimony of Nundcomar, by saying that he was of infamous character and hanged for forgery, he would prove that he was hanged by the Chief Justice, to screen Mr. Hastings from the accusations brought against him for bribery. These are not the precise words

words of Mr. Burke, but they are the purport of what he said. A charge of this kind had been brought against the Chief Justice of Bengal in the preceding Session of Parliament, and rejected. It is true, the majority for rejecting the charge was not great.

Mr. Hastings, feeling himself much injured by Mr. Burke's saying at the bar of the Lords, in his delegated character of first Manager for the House of Commons, that he had murdered Nundcomar through the medium of the Chief Justice, petitioned the House of Commons to make it an article of charge against him, in order that he might have an opportunity of publicly refuting what he thought the grossest of calumnies. This petition reduced the House to a very awkward situation. It was impossible to grant the prayer of the petition without falling into the greatest contradictions. How could they say in an additional article, that Mr. Hastings had suborned the Chief Justice, when they had previously said that the Chief Justice was not suborned by Mr. Hastings. The consequence was, that the Commons were under the necessity of disavowing their first Manager. But as Mr. Burke and others of his party still persist in saying, that though the Commons have decided otherwise, they shall always maintain their former opinions, I shall digress a little farther, and state in as few words as possible what I take to be the real fact. In doing this, I shall follow principally the evidence of Mr. Farrer, who was Nundcomar's advocate during his trial.

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The enemies of Mr. Hastings and Sir Elijah Impey, wishing to have it thought that the accusation for Forgery sprung up against Nundcomar from the accusation he had made against Mr. Hastings for receiving presents, carefully suppress one very material circumstance. Mr. Farrer arrived in Calcutta at or before the formation of the Supreme Court of Judicature, and in about a month after his arrival, Mr. Driver, an attorney, informed him that a suit had been instituted against Nundcomar in the Mayor's Court; but as there was a Forgery in the case, he, Mr. Driver, had advised his client to institute a criminal prosecution against Nundcomar, and that his client had agreed to the advice. There was, however, an obstacle in their way: the original papers, without which the Forgery could not be established, were lodged in the Mayor's Court, and though the Court were willing to grant copies, the originals could not be obtained.

Mr. Driver added, that the Mayor's Court was not so free from influence as could be wished, when proceeding against such a man as Nundcomar; but now, as a more independent court was established, he should advise his client to apply again for the original papers. Mr. Farrer, who was then on the prosecution side, moved the court for the papers, six weeks before Nundcomar's accusation was produced at the board by Mr. Francis. It appears not to have been an easy matter to get possession of the original papers: for I observe Mr. Farrer was obliged to repeat his application twice, before he obtained them.

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Soon after this, Nundcomar was committed to prison, and the prosecution began.

I have been more particular in stating this circumstance, because it proves beyond the possibility of contradiction, that the idea of trying him for forgery originated with Mr. Driver some time before Sir Elijah Impey arrived in Bengal. The trial went on in the regular way, and Nundcomar was convicted, to the satisfaction of every body. Mr. Farrer, in his evidence given before the House of Commons, does not seem to express a doubt of his guilt. On the contrary, it is evident that Nundcomar endeavoured to prove his innocence by the most glaring perjuries, and his witnesses were prosecuted by order of the Court. It is true the forgery had been committed six years or more before the prosecution was undertaken, but there are many good reasons for its not being done sooner. It was a case between an executor and a debtor, in which the latter set up a forged Bond or Note against the claim of the former. The dispute was referred to a Native Court of Justice, and thence to arbitration, about five months before the establishment of the Supreme Court of Judicature at Bengal.

During the proceedings in the Native Court, Nundcomar was offered this alternative, either to refer the dispute to arbitration, or to swear to the truth of his set-off. He declined both, but at length accepted the former.---There is nothing in the whole proceeding which appears to me objectionable, except the not respiting the convict till his Majesty's pleasure

pleasure were known. Sir Elijah Impey in his defence has demonstrated the legality of all he did; he has also fully shewn, that none of those reasons, which usually induce Judges to recommend a convict to mercy, had any existence in the case of Nundcomar; but there is one circumstance which has escaped the Chief Justice, and which is applicable only to a convict in that country---Forgery is not a capital offence by the laws of Indostan, and it was made capital in England to answer commercial purposes only.---There is nothing but rigid necessity that can justify mankind in depriving their fellow-creatures of life. It is sacrificing a few for the good of a great many. In England it might be wrong to pardon forgeries, because it might encourage offences of that nature; but the reasons which demand the execution of a penal statute in this country, do not demand it in that. Every Judge must feel, when he enforces a penalty or sentence beyond what the nature of the offence seems to require. Forgery is certainly in its own nature a very heinous offence, but not more so than any other fraud or deception which deprives a man of his just property; and yet one man may cheat me of my fortune, and no law will punish him for it, whilst another, who by forging deprives me of a few pounds, forfeits his life for it.

It is nothing but the necessity of supporting commerce, that could have induced our Legislature to make one species of fraud so much more positively criminal than another. I think Sir Elijah Impey should have respited Nundcomar upon this ground;
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but there are other reasons why he might have respited execution. But in what I have said, I give my own opinion only; I may be singular, and therefore do not wish any person to adopt it.

The Attorney-General, the present Lord Chancellor, in 1776, gave an opinion to the East India Company, on the subject of commencing a prosecution against Mr. Hastings for the lack and a half of rupees, supposed to be received from Munny Begum.—He says, “Nundcomar’s evidence goes for nothing;” and why, because after conviction, his oath cannot be taken. To Mr. Hastings it could be of no consequence whether the man was hanged or not. I never have been able to account for the desertion of Nundcomar by Sir John Clavering, Mr. Monson, and Mr. Francis. Had they applied to Sir Elijah Impey, I believe he would have respited him; but General Clavering, who received a Letter from Nundcomar before his execution, would not even open it till after he was hanged.

I have now gone through what Mr. Burke calls the *concealed Presents*. There were two other allegations of the same nature, which I understand are abandoned, but why, I do not know; perhaps they are thought untenable.

It was my intention to have treated of the *avowed Presents* in the same manner I have done with respect to the former. But upon looking over the Charges, I find a want of documents. As far as I have gone, I have drawn by much the greater part of my infor-

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mation from the evidence, written and oral, adduced by the Managers in support of the prosecution.

This part, which concerns the *avowed Presents*, is expected to come on at the Meeting of Parliament, and has not yet been much entered into, so that I find it impossible to particularize, without the danger of mis-stating some part or other, a thing I most carefully wish to avoid. I therefore must content myself with saying, that it appears by the Charges, that Mr. Hastings received, for the use of the Company, above 200,000*l.* at different times, from the natives of India. I also understand from other channels of information, that above 40,000*l.* of the above sum was received, entered, and expended in such a way, as to excite suspicion of Mr. Hastings having had an intention of keeping the money for his own use. I cannot judge by what means the suspicion will be maintained or supported, if what I hear be true, that the Managers have no evidence except what they draw from Mr. Hastings's own statement, and that of his attorney, the Accountant-General. Supposing these to be their only proofs, I do not see how guilt can be inferred from contradictions in accounts, particularly when it is considered that accounts in India are mostly kept by the natives, and that in fitting the Hindoo dates and Mahommedan dates to the English, very great errors must unavoidably arise. Instead of drawing an argument in proof of guilt from the contradiction of accounts, I should think it much more fair to conclude, that such contradictions must be a proof of innocence. For whoever is possessed of all the in-

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formation, and intends to deceive, will never fail to make up such an account as will not contradict and expose itself.

There is one argument which struck me upon slightly casting my eye over the statement of the presents, as made out by the Accountant-General, which is unanswerable. I mean that those presents upon which the suspicion is cast, were received whilst Mr. Francis was in India, and those which were received afterwards, were carried to the public accounts without delay, and without any circuitous proceeding. The plain inference to be drawn from this, is, that Mr. Hastings was in the time of Mr. Francis obliged to make use of indirect means to carry on the business of Government. He often wanted to expend sums on secret service, which he had every reason to believe Mr. Francis would oppose. But no sooner was that gentleman gone from Bengal, than Mr. Hastings, finding himself no longer under the necessity of taking indirect means, acted more openly and unequivocally. Now the fair way of reasoning is, to say, that if Mr. Hastings wished to keep the Presents for his own use, he had a better opportunity of doing it after Mr. Francis was gone than he had before: there was no active spy to investigate his conduct. All the apparently irreconcilable parts of Mr. Hastings's administration may, as I have more than once said, be imputed to the opposition he met with in Council. He concealed the receipt of a sum of money, and he sent a sum of nearly the same amount to purchase the forbearance of a Mahratta

army. Both these measures Mr. Francis would probably have condemned, at least Mr. Hastings feared he would. It is impossible for human ingenuity to account for Mr. Hastings's concealing many transactions more in the time of Mr. Francis than afterwards, upon any other principle than that general aversion he had to litigate and fight with his colleague every inch of ground he advanced in the service of his employers. I do take this argument to be a full answer to all that can be inferred from the inaccuracy of accounts; for I am certain no man, that ever was in India, will deny, that if *money* was the object of Mr. Hastings, the best time for him to effect it, was after the departure of Mr. Francis.—Whereas we find, that when he was under no restraint, every Present was brought publicly to public account. It may be said, this is arguing from supposition only; but surely when the intentions of a man are inferred and deduced from his acts in one instance, it is equally fair to do the same in another.

It is useless for me to argue this point any farther. It already carries conviction to my mind, and so it must remain till I hear something against my argument, of which I can at present form no idea.

It is true, some of the bonds were received after Mr. Francis's departure, but the money was received before. Add to which, the coalition between Mr. Hastings and Mr. Wheeler was not strengthened by experienced confidence and support at the time of taking the bonds.

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I have now gone through all the Charges that are yet brought forward, and as there is a probability of there being already enough in hand to last till the Dissolution of Parliament, I shall not meddle with the remainder.

One observation you must have made, namely, that all the Charges, except that made by Nundcomar fifteen years ago, are of a political nature, and whether they are held criminal or innocent by the Lords, it is evident that they originated from that defect in the Constitution of the Government in India, which has pointed out no legal means of providing for extraordinary occasions. A question naturally arises—How comes it that Mr. Burke and his friends discover so much criminality in these proceedings? It is impossible to answer that question, unless you impute motives which I would not impute to any man, by any other supposition than this, namely, that Mr. Burke drawing his ideas of right and wrong from the observations he has made in this country, cannot admit any measures to be right which has not the sanction of the British Parliament. And yet this supposition will not totally answer the question, because we well know, that Mr. Burke has both the capacity and means to acquire as good a knowledge of the customs and manners of India as any man could possibly have, without being on the spot.

I am surprized much less at the ill reasoning of the bulk of mankind on this question, than I am at the arguments adduced by some of the Managers.

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They all know as well, or much better than I do, the impossibility of carrying on a war without money. They know also, that no State can raise the supplies for a war, particularly of a complicated one, within the year. And they know also, that out of five ways adopted by the Government in India to raise extraordinary supplies, three of them are made matter of impeachment. One of them was in one instance reprobated by the Directors, and another was so managed as to give great dissatisfaction, for a time, to those who were principally concerned.

I believe no human invention could have struck out a sixth method of raising money in India during the war. Government borrowed as long as any one would lend, and they opened their Treasury for unlimited remittances; the last of which was severely condemned, and the lenders hastily ordered to take the money they had advanced back by instalments. They taxed Chyei Sing, and Mr. Hastings is impeached for it. The Nabob of Oude was urged to resume the treasure left by his father, and withheld from him by his mother, and Mr. Hastings is impeached for it. The natives made presents to Mr. Hastings; he received them, and expended them in the Company's service, and he is impeached for it. Now I would put this case very seriously to the feelings, and also the understanding of every man who will take the trouble to read what I have written.--- Every man must take this into very deep consideration before he can with safety take upon him to judge of the merit or demerit of Mr. Hastings. Necessity is the

the only thing that can legalize or justify taxation in any State: if it can justify taxation in one State, it can in another. But there is something peculiar in Mr. Hastings's case: his accusers will neither let him raise money by taxation, nor voluntary donation. He ought not to have received money from the Nabob of Oude, because he was poor; yet the Company was known to be much poorer. But if poverty was a good reason why a person should not contribute to the aid of a sinking, or even of a rising State, it might be pleaded by many people, very effectually and justly, against the payment of taxes in this country.

Mr. Pitt inveighed for an hour against the disproportion between the sum Cheyt Sing should have paid, and the sum Mr. Hastings proposed fining him. It was in the ratio of ten to one; and yet Mr. Pitt does not scruple to bring in an act which fines a person for evading the duty upon a hat to the amount of three-pence, in the large sum of 10*l*. The fine in this case is 800 to 1; but even upon a good hat, where the duty is 2*s*. the fine is in the proportion of 100 to 1. But almost all our penal statutes lay on a penalty in a ratio much higher than Mr. Hastings ever proposed fining Cheyt Sing.

Before I take leave of this subject, I must take notice of something which formerly fell from Lord Mulgrave:—he said that ignorance was a *shabby excuse*, and that it was of little avail in Mr. Hastings to say that he misunderstood the Act of Parliament, and that he conceived the intention of the act to be the
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restriction of Servants, and not of the Company, with respect to the receiving of Presents. Possibly Mr. Hastings may be wrong in his construction of the clause, though I much doubt it; but this I can safely affirm, that Lord Mulgrave's assertion is much less defensible than Mr. Hastings's construction of the Act in question.

Having the statute now before me, I will quote the clause at length, to enable you, and every one who reads this letter, to judge how severely the words are taken against Mr. Hastings, in order to make him criminal.

“And be it further enacted by the authority aforesaid, That from and after the first day of August, one thousand seven hundred and seventy-four, no person holding or exercising any civil or military office under the Crown, or the said United Company, in the East Indies, shall accept, receive, or take, directly or indirectly, by himself, or any other person or persons on his behalf, or for his use or benefit, of and from any of the Indian Princes or Powers, or their Ministers or Agents (or any of the natives of Asia), any present, gift, donation, gratuity, or reward, pecuniary or otherwise, upon any account, or on any pretence whatsoever; or any promise or engagement for any present, gift, donation, gratuity or reward: And if any person, holding or exercising any such civil or military office, shall be guilty of any such offence, and shall be thereof legally convicted in such Supreme Court at Calcutta, or in the Mayor's Court in any other of the said United Company's settlements where such

such offence shall have been committed; every such person so convicted shall forfeit double the value of such present, gift, donation, gratuity, or reward, so taken and received; one moiety of which forfeiture shall be to the said united Company, and the other moiety to him or them who shall inform or prosecute for the same; and also shall and may be sent to England by the order of the Governor and Council of the presidency or settlement where the offender shall be convicted, unless such person so convicted shall give sufficient security to remove him or themselves within twelve months after such conviction.

And it is hereby farther enacted by the authority aforesaid, That every such present, gift, gratuity, donation, or reward, accepted, taken, or received, and all such dealing or transaction, by way of traffic or commerce, of any kind whatsoever, carried on contrary to the true intent and meaning of this act, shall be deemed and construed to have been received, taken, had, and done, to and for the sole use of the said united Company; and that the said united Company, upon waving all penalties and forfeitures, shall and may sue and prosecute for the recovery of the same, or the full value of such present or gift, or the profits of such trade respectively, together with interest, at the rate of five pounds per centum per annum, from the time of such present, gift, gratuity, donation, or reward, being received, or of such dealing or transaction, by way of traffic or commerce, as

aforesaid, by action, for money had and received to the use of the said Company."

To bring the criminating part of the clause into a narrower compass, so that the different members of the sentence may be more readily connected together, I will abridge and analyze it. It will stand thus, when a little reduced:—After the 1st of August, 1774, no servant of the King or Company, being in the East Indies, shall receive directly or indirectly, by himself (or any other person or persons on his behalf, or for his use and benefit) from any native of Asia, any gift, upon any account, or upon any pretence whatsoever. Those lawyers who contend that this clause deprives a Governor of the power of taking presents for the use of the Company, must, in their construction, disjoin the monosyllable *or*, all the words which I have put into a parenthesis, and then it will stand thus, No servant, &c. shall receive by himself, directly or indirectly, from any Asiatic, any gift, upon any account, or on any pretence whatever. Taking the sentence in this way, it may be contended, that the words *on any account*, or on any pretence, may exclude the Company also; that is, that no servant of the King or Company shall receive gifts from an Asiatic, on any account, not even on account of the King or Company. Dividing the sentence in this way, a doubt may be raised, but the true meaning and intention of the clause is discoverable by the words in the parenthesis; which infer, that no servant of the King or Company shall receive a gift from a native

tive through the medium of another person, for his own use and benefit; but this clause does not say that a servant, &c. shall not receive, through the medium of another person, a gift for the use of the Company. It only restrains this middle-man or agent, from receiving gifts for the benefit of his principal, and not from receiving gifts for the use of the Company. Mr. Hastings here might oppose quibble to quibble, and say, that I never saw nor received one rupee of the money. My agents received it, it is true, but they were restrained from receiving it for my use, but not restrained from receiving it for the use of the Company. Or, in other words, I am forbid the receipt of presents by myself, and by my agents also for my use, but I am not forbid receiving presents through an agent for the Company's use. I think no man can read the above clause, and seriously believe that it was the intention of the legislature to take away the Company's right to Peechush, Nezer, and other customary donations, by such vague and loose words as are found in this questionable clause.

Had such been the intention of Parliament, the Company would have opposed it, either by some of the Directors who were members of Parliament, or by Counsel. They were in this instance silently and unobservedly deprived of a very valuable part of their charter. But it never was understood either by the Supreme Council at Calcutta, by the Court of Directors at home, or the King's Ministers, that this act had taken away the Company's right to presents.

If Mr. Hastings was in an error, he was so in common with all others, and the mistake might have continued to this moment, had not the diligent search of his enemies brought this up against him. But supposing that Mr. Hastings has misunderstood the Act, to which I by no means assent, there is still another clause in a later Act, which cures the disorder; for in the 24th of his present Majesty, there is one clause which expressly forbids the receipt of gifts, &c. &c. for the use of the individual and the Company also. And another, which repeals so much of the Act above-mentioned (to wit, the 13th of George III.) as subjects any person receiving presents to any penalty or forfeiture for so doing, provided no prosecution be commenced before the 1st of January, 1785. Surely if one Statute be strained to its utmost, or even beyond its natural and obvious meaning, against him, another ought to be construed in his favour, or at any rate it should not be totally rejected. It does strike me as a very hard case, if a repealed clause be revived against a man, and a living clause not suffered to operate in his favour.

Having now laid before you the clause from which the criminality is extracted, and shewing its obscurity was such as to lead many into error, I shall examine the validity of Lord Mulgrave's opinion.

First, I would ask him, whether any man, not a lawyer, would construe the act differently from what Mr. Hastings did? And whether he is himself at this moment clear in his opinion, that Mr. Hastings has mistaken the sense of the Act? But for argument's sake

sake, I will for the present suppose he has mistaken the interpretation of the clause; but then I must tell his Lordship, that all writers upon penal laws agree in this, that every penal Statute ought to be expressed in the most clear and intelligible language, and that to punish for the breach of such as convey an obvious meaning very different from the real and latent meaning, would be to lay snares for innocence, and to punish the subjects for the offences of the legislators. The use of punishment is to prevent the commission of future offences; but if you punish 50 men for misunderstanding an obscure clause in a penal Statute, your examples will be of no use, for they never can assist the understandings of men in interpreting the next obscure Statute that may fall in their way.

Lord Mulgrave must have drawn his argument from having heard it said, that ignorance is no excuse in criminal cases with a Court of Law. It is very true ignorance is inadmissible, but why is it so? The reason is, that if ignorance were received as an excuse, it would be often pleaded, and in a great measure defeat the purpose of the law. It is undoubtedly a great evil to punish any man for a positive crime, unless he knew before the commission of it that it was made criminal by some Act of Parliament; but it would be a still greater evil to let the offence go unpunished, because it would be an encouragement to others, who would plead ignorance also, and defeat the operation of law in every instance. The law goes upon general principles, and makes
choice

choice of the lesser evil. But that does not apply to impeachments, which go upon partial principles, and not general ones. The nature and use of impeachment is to punish such offences as the common or statute law will not reach. It is to preserve the Constitution safe from those whose high offices and stations might enable them to injure it, without being amenable to common law proceedings. A Statesman may do his country a thousand mischiefs, without being exposed to danger from any Statute whatever. The House of Commons therefore, which may be considered as the representatives of the people, and consequently guardians of their own rights and welfare, have a right to resent and prosecute any offence committed against the State or Nation at large. In order to establish state criminality, it is necessary to shew that the people are injured, or likely to be injured. All public prosecutions are founded upon this principle. I believe were we to go through the History of impeachments, we should find that they were undertaken to punish crimes which might some way or other hurt the public.

Now let us examine how the misunderstanding of this Act of Parliament can possibly affect the people of England in such a manner as to induce them to demand vindictive justice for it at the bar of the House of Peers. An Act of Parliament is made professedly with an intention to restrain the Company's servants from taking presents from the Indians; but by the loose manner in which it was penned, it becomes

comes a matter of doubt, whether the prohibition does not extend to the Company as well as to their servants. In the mean time, before this doubt was suggested, the Company's chief servant, in time of actual necessity, receives 2 or 300,000*l.* in presents from the natives for the use his masters.

This is the true state of the case, and I must say, and I believe every impartial man will agree with me, that if the preservation of the Company's territories in India be of advantage to the public, the people of England are not injured by Mr. Hastings's receiving presents for the use of the Company and the defence of their territories. How then must it strike every man of reflection, when he sees the people of England rise up against Mr. Hastings, and tell the Lords, that we demand justice against the man for mistaking a statute, at the same time we acknowledge that his intention was to serve us, and that he did most essentially serve us thereby? One might here ask the people—Is this man the enemy of his country? No; He is the friend of his country. His very mistakes were our salvation. But I hitherto have understood, that those who demand justice against an offender, always do it under an idea that they are injured or likely to be injured by some act or other; but in this instance, you are neither injured nor likely to be injured. Why then do you demand the infliction of punishment? The only answer that could be given by the people is, that owing to the obscurity of the clause, he misunderstood the prohibition of our legislature, and therefore we demand that the criminal

criminal may be punished for a crime he never intended to commit.

This is a plain statement, as far as regards receiving presents for the use of the Company; and I am firmly persuaded, that no disinterested man in this kingdom would wish to see a Governor General called to account for such an offence. It is true, if any informer had sued Mr. Hastings within the limited time, for the penalty of double the value, as stated in the clause, and if the Court had been of opinion, that the words of the Act excluded the receiving presents for the use of the Company, the plaintiff must have recovered. But the reason is, that the Judges have no discretionary power to refuse judgement upon a penal statute, when demanded, however much they may feel for the prosecuted party. But the case is widely different with the member of Parliament, who is called upon to vote for or against an impeachment for the breach of a penal statute. The member has a court of conscience in his own bosom, and can put to himself this question:—Who is most in fault, the person who pens an obscure sentence, or the person who misunderstands it?—I would ask Lord Mulgrave if there can be two answers given to that question. And I would beg of him to consider the distinction between the Judge who is bound to enforce a penal statute, according to the letter, without adverting to the spirit, and the prosecutor, who has the liberty of conscience to enjoin or restrain the prosecution. Had Mr. Hastings said, I did not know of, or I for-

forgot the Act of Parliament; it would have been, as his Lordship observed, a *shabby excuse*; but when we consider that the true explication of an obscure clause can only be obtained from the opinion of the Judges, or a new declaratory law, we must allow, that to a person in India, the means of understanding and knowledge were not within his reach; and that ignorance of a fault was an unavoidable, and consequently a pardonable one. I have bestowed more pains in examining this question than you perhaps may think necessary; but it is owing to a wish I entertain of preventing an unfair impression being made by the opinion of Lord Mulgrave, who in most cases is certainly a very respectable authority; but in this I differ with him *toto cælo*. You are, however, to observe, that what I have said, has nothing to do with the impeachment in this article, when it is put on the other ground; namely, that Mr. Hastings actually received the presents for his own use, and gave them up through fear of detection. If the Managers can establish that clearly and demonstratively, I suppose there will not be two opinions as to the guilt.

Much has been said on the length of the present trial. It certainly is unprecedented in the annals of England. It is, perhaps, the first instance of the kind that ever happened in the known world. Sir Walter Raleigh's was a hard case; but he was not longer under trial than others had been before him. But in all diseases, the first thing to be considered is, the nature of the malady—whether it admits of a

remedy, and whether the remedy is not worse than the disease? Mr. Hastings's friends say, that the articles are numerous; that the items or allegations are nearly 2000; that the expence is enormous, beyond the power of any fortune to support; that two sessions are already passed away in hearing the evidence in proof of two articles only, and part of another; that, by analogy, it will take sixteen years to go through the prosecution; and that two or three years more may be reasonably allowed for the defence and replication. Hence they say, it is evident, that should Mr. Hastings's life be protracted to seventy, he cannot see the end of the trial. They enumerate many more hardships than what I have mentioned; but as you must have seen them stated in the newspapers, I shall pass them by. But after all, I must confess, that it is very difficult, in the present stage of the business, to point out a remedy. It is an evil or injury beyond the reach of the law to redress. Our ancestors, in framing the constitution, have taken every possible precaution to guard against the overbearing power of any single branch of the legislature; but should they all unite, or one part passively observe the oppression of an individual by another, there is no remedy; nor is it in human wisdom to provide one.

The Commons have, by the constitution, an undoubted right to impeach whomever, and for whatever they please. It is fit they should have it; for, as I have said before, every state must have a discretionary power to punish undefined offences, to provide

vide against future evils, and to remedy those which have happened. It must have a power of punishing by a kind of *ex post facto law*; but then it certainly ought to be exerted against those actions only which are in their own nature criminal, or in some way or other prejudicial to the state. And whilst the discretionary power is confined to this, there can be no harm in it; for there is a kind of obligation on every public man to act for the benefit of the state that employs him: a failure of duty is justly punishable. But it is also incumbent on those to whom the people have delegated the power of punishing, to use it with moderation, and not exceed the bounds of natural justice. The thing complained of in this instance is, that the Commons, by voting such a number of articles, and loading them with so many allegations, have inflicted a punishment more severe than would possibly have been sentenced by the Lords, had the defendant pleaded guilty at once. Certainly, as the event turns out, it would have been more prudent in Mr. Hastings to have pleaded guilty, when first called upon to answer; but who then could foresee the procrastination which has since happened. As matters now stand, Mr. Hastings has nothing to hope, but from the mercy of the Lords, and the Ministry. It is in the power of the latter to shorten or lengthen the session of Parliament (I mean with the consent of the King) and it is in the power of the former to appoint the days of sitting, and to make them more numerous than heretofore.

This appears to me as the only way of relieving Mr. Hastings; and if the Lords will not take this part, there is no remedy upon earth. It is true, the Parliament must of course, in a certain space of time, be dissolved; but as many of the same members may probably be returned again, the impeachment may of course be renewed, and continue on for another session. It will never be in the power of any other branch of the legislature to say to the Commons, We will restrict you as to the number of articles you are to exhibit against the prisoner, or to fix the *ne plus ultra* as to matter or time. The Commons are in possession of a valuable and necessary privilege, and they ought not to part with it, nor suffer it to be entrenched on in the slightest degree. They have the same power over a state officer, as a rich man has over a poor neighbour. The latter may bring action after action against the poor man, till he has ruined him by expences; and though the poor man may have every verdict in his favour, yet the courts of justice can never prevent the rich man from renewing the old suit, or striking out some other equally ruinous and oppressive. These are evils to which all classes of people are liable; and it is impossible to contrive laws to prevent them totally. I have heard many disinterested people exclaim, not against this privilege of the House of Commons, but against the exercise of it to too great an extent against an individual. I have heard it repeatedly affirmed, and Major Scott has more than once said it in the House of Commons, as well as in his

his publications, that many of the articles passed with little examination; in short, that they were voted in the lump. Supposing this to be true, and I have never yet heard it contradicted, it amounted to little less than an impeachment for life; and I have heard it called the giving of him up as a victim to the Managers.

The former part of the last sentence I firmly believe, and the latter I have heard strongly maintained in private companies by those who were not the adherents of Mr. Hastings. This is a length to which I did not go, for I consider the greater part of the House as deceived in their expectations. They had not made themselves sufficiently acquainted with the subject to know what an immense mass of evidence, written and oral, must be brought to sustain such a number of allegations. Neither did they foresee, that their Managers would take four or five days to open half an article, and as many more to sum up the evidence upon it. I even doubt much if Mr. Burke himself foresaw the extent of the trial; yet if any one had the means of foreknowledge, he certainly was the man. He knew, that with the closest application, it cost him some years to understand India business; and it was but reasonable to suppose, that it would cost him as many, if not more, to make the Lords understand it. I say more years, because the Lords would apply only a few hours in a day, and but a few days in the year, when compared with the time spent in the acquisition of knowledge by Mr. Burke. Add to which, much delay

delay might naturally be expected from the Counsel objecting to evidence. Hence one may reasonably conclude, that Mr. Burke knew at the time, that he had carried out work for many years.

I have heard the procrastination on the part of a Chief Magistrate imputed to interested motives; but I am unwilling to suspect him of that, without stronger grounds. But certain it is, that much time has been very unnecessarily consumed in long Speeches and vehement Declamation. This kind of Oratory serves very well to amuse the Audience in the Gallery, who occasionally attend as a matter of amusement; but to the Lords, who attend as a matter of duty, it must be irksome and fatiguing in the extreme. At the same time it is impossible to stop or prevent these repetitions, if the Managers are determined to persevere in the use of them: they claim the privilege of being heard, and it cannot be denied them.

The more I consider the situation of the Judges, the Accusers, and the Defendant, the more difficulties present themselves to my mind. The Commons have voted and pledged themselves to substantiate a mass of allegations that must employ them for many sessions; and they cannot with honour withdraw them: they cannot hasten their Managers without giving them offence, and perhaps provoke them to resignation; and the Managers, if we may judge from the length of their Speeches, &c. shew very little desire to bring the Trial to conclusion.

There is at this time an information filed against
a pub-

a public paper, for calling this prosecution a shameful business. It is undoubtedly a very improper term to be applied to any Act of either branch of our Legislature; but it must be admitted by every impartial man in the kingdom, that the delay is and must be extremely oppressive; and it were much to be wished, that both Houses of Parliament would unite in bringing the business to a speedy conclusion. The Lords might contribute their share by sitting often, and with as little interruption as possible; and the Commons might contribute their share, by advising their Managers to make use of as little delay as possible: without the concurrence of both Houses in this joint endeavour, the prospect for the Defendant is dreary indeed; and it would be an act of mercy to end the Trial by a Bill of Attainder at once.

The friends of Mr. Hastings complain loudly against the Prosecutors for withholding, or rather for not bringing forward the evidence of certain Gentlemen, which would have made in favour of the Defendant. I hardly know what to say upon this point, nor do I well understand the practice of other courts in like cases. I have indeed heard it said, that Lawyers hold it dishonourable in a Counsel for the Prosecution to withhold evidence, which in the course of his inquiries he has found favourable to the person accused. Whether this be Law, or only a point of honour, I do not know; but in reading over the Speeches of the Chief Managers, I took notice that they bound themselves to the observance of more candour than is usually observed by

by Advocates in ordinary Prosecutions. They said they would take no advantage in aggravating the Charge, nor state any thing against him, which they could not and would not establish against him by competent evidence. They considered themselves as the Representatives of the Commons of Great Britain, as the Advocates for Truth, and not as Advocates bound to maintain a Criminal Prosecution against it. After such a declaration from Mr. Burke, one would not have expected the story of Deby Sing; a story so artfully introduced as to do the Defendant more harm than all the twenty Articles put together, in the opinion of mankind; and at the same time to preclude him from the benefit of calling evidence to refute it. Whether this really was an ingenious contrivance of a Chief Manager, or whether he introduced it without foreseeing the effect, I know not; but there never were two things more at variance with each other than this narrative and the declarations I have just quoted from their Speeches. I do not find fault with Mr. Burke's bringing this history before the Bar; but it is the manner in which he did it that I condemn. He bespoke and certainly gained credit by his professions and promise of candour, and then introduced criminal matter, which he knew must make a very deep impression; taking care at the same time to leave the Accused without the means of effacing it. But this is not all; for in the very narrative of which I am speaking, the evidence of Mr. Anderson was not brought forward, which would, if stated, have totally destroyed all the effect wished to be pro-

produced. Were I the Advocate of Mr. Hastings, and were I to write with the intention of exposing the contradictions in the speeches, declarations, and doctrine of the Managers, I could expose a picture that would be very unpleasing to them, and disgusting to the public.

The great evil which in my opinion is most likely to affect Mr. Hastings, by the Managers neglecting to call certain Gentlemen as evidence, is death. Some are already dead; and many more will be so by the common chance of mortality, long before Mr. Hastings will have an opportunity of calling them. This also is a misfortune for which I see no remedy, but in the honour and justice of the House of Commons.

There is another thing much complained of by Mr. Hastings's friends: it is the superiority which the Managers claim over the Defendant's Counsel.

—They say they are cloathed in the robes of Magistracy.—If this be the law of the land, if they really were so cloathed, a trial would be a mere farce or mockery. It is the part of a Magistrate to command, and not solicit. They might in their Magisterial capacity give the law, and not receive it. The Gentleman who threw out this doctrine, would be very unwilling to allow it, should the day ever come when he might see himself or his friend at the Bar in Westminster-Hall. He would again become the advocate for the rights of the people, against tyranny and oppression. I look upon the

broaching of this doctrine in Westminster-Hall as done at random, or by way of experiment, something like the Prince's right to the Regency, set up by Mr. Fox and Lord Loughborough.

I shall conclude with making a few general observations upon the probable injury which individuals, who incur the displeasure of a House of Commons, may hereafter receive from this precedent. Every body knows, that all popular assemblies are very liable to divide into parties; that opposition excites animosity, and that men become more and more heated by their own declamations, as well as those of others. This prosecution has pointed out the way, and furnished a precedent for oppressing an object of resentment without a sentence or judgement. A House of Commons alone can do more towards punishing an individual, whether innocent or guilty, in many cases, than could be beyond the severest sentence. It requires nothing more than the voting of an immense mass of allegations, to fix the accused to the Bar for the remainder of his life. This certainly is the first instance of the kind; but it may become general. Every accuser wishes to take all advantages he can, if we may judge from practice and not professions. And as future accusers must see the advantages obtained by management and delay in this trial, they most undoubtedly will avail themselves of the same, or similar means of procrastination. Should this evil become general, it must and will, like others, when arrived

to

to a certain height, redress itself; that is, a law must be made to limit the length of the proceedings. It may hereafter be found full as necessary to guard against the oppressions of representatives, as against the throne.

Thus far was written and published previous to the last Session of the last Parliament. What follows was written after the Dissolution of Parliament, and contains an account of what passed, respecting the Trial of Mr. Hastings, during the last Session.

THE last Session ended with the close of the Evidence and summary thereof on the 3d Article. I shall now, in order to render as complete as possible what I formerly wrote on this subject, give a clear and concise statement of the remaining part of the Article concerning presents, and that the reader may at one view see the full extent of the charge, I shall subjoin a list of the Donors and their donations.

	Rupees.
Rajah Chyte Sing - - - - -	200,000
Rajahs Cullian Sing and Kelloran - -	200,000
Nundolol - - - - -	50,000
Rajah of Nuddeah - - - - -	150,000
Rajah of Dinagepore - - - - -	200,000
Nabob Vizier - - - - -	10,00,000
Rajah Nobkessen - - - - -	300,000

These were originally distinguished by Mr. Burke by the appellation of *avowed presents*, as those of which I treated last year were by that of *concealed presents*. To this list was subjoined by the Managers in the prosecution of this part of the Charge an allegation borrowed from the 12th Article of Charge which states the offer of another present of ten lacks which were not received by Mr. Hastings.

I shall begin with the first present, namely, that from Rajah Chyte Sing; it was offered to Mr. Hastings through his Agent Sadanund, the declared intention of which was to atone for the neglect the Rajah had been guilty of in not paying the five lacks demanded of him by our Government, in aid of carrying on the war the two preceding years. This demand on one side, and neglect of payment on the other, were the cause of the Rajah's expulsion from his Zemindary, as was fully shown when I treated of the 1st Article. When the offer of the two lacks was first made, Mr. Hastings refused it, but in a short time after he sent for Sadanund and agreed to accept it. Mr. Larkins the Accountant General was privy to the transaction, and received the money. By his letter to the Chairman of the Court of Directors, it appears that Mr. Hastings at the time of receiving the money, declared his intention to apply the same to the use of the Company, in removing Mr. Francis's objection to the want of a fund for defraying the expences of Col. Camac's Detachment. It is here necessary to be observed that

that Col. Camac's Detachment was intended to cause a diversion of the Mharatta forces from the West side of India, and to enable General Goddard to carry on his plan of operations with more effect in the vicinity of Gazeret. Mr. Francis objected to the sending of a Detachment under the command of Col. Camac on account of the increase of expence, and Mr. Hastings in order to cheat him into consent, proposed paying the extra charges out of his own purse, at the same time intending to apply the abovementioned two lacks to that purpose. If there were any thing wrong in the attempt to impose upon Mr. Francis, (which by the bye did not succeed) it was owing to that strong opposition which the latter almost always made to the measures proposed by the Governor General. Mr. Hastings, however, did not conceal the receipt of the present from the Court of Directors, but in his first letter on that subject he was not explicit enough to satisfy their curiosity. They demanded a further explanation, which was given to them by Mr. Hastings and Mr. Larkins the Accountant General.

This Article concerning presents, as the Managers have now brought it forward, divides itself into many branches, and includes also the letting of lands, for they say that Kelloran and Cullian Sing, two Rajahs of the Province of Behar, made presents to the amount of four lacks of Rupees, on consideration of the leases which were granted them. They argued this point with great ingenuity, for either *the lands were let too cheap or they were not ; if they were*
let

let too cheap, why then, they tell us, that the Company's Interest was sacrificed for a Bribe to the Governor General; and if they were not let too cheap, why then the taking of the four lacks of Rupees was an act of extortion upon the distressed Rajahs. This at first sight appears to be conclusive reasoning, but the strength of it is utterly destroyed, when we consider that it is the general practice of renters in that country to make presents upon the granting or renewing of leases. It is highly probable that sums of nearly the same amount would have gone into some other channel had the lands been let by or to any other persons. Add to this, a renter in India would pay a gross sum under any other denomination, much rather than under that of rent. An increase of rent forms a precedent and tends to open the eyes of Government to the true value of the lands, a species of knowledge which every renter must from motives of self-interest wish to keep from the proprietors of the soil. It is admitted that two lacks of Rupees were received, but it appears also that as soon as the money was received, it was carried to the public account and officially entered under the proper head. There is no ground for suspecting that Mr. Hastings intended to apply the donation to his own private purpose, and unless some such intention could be established or made, at least, very probable, there can be no criminality in it, for whether the act of taking were right or wrong, it amounts to nothing more than an error of judgement.

Another

Another present, received upon a different footing, came from the Rajah of Dinagepore. It amounted nominally to four lacks, but two only were realized. It was paid under the denomination of *Peshcush* or fine upon the investiture of the young Rajah after the death of his father. Great exertions were made to connect this present with the letting of the lands in the districts of Dinagepore and Rungpore, but the dates repel this attempt in an instant. The party that made the present, and the person that rented the lands, were very different: add to which, the present was made one year before the alteration took place in the Collection of the Revenue. There was also another present received to the amount of a lack and a half of Rupees from the Rajah of Nuddeah.

All these presents were carried to the public account, but the manner in which some of them were paid into the Treasury, was such as to excite suspicion that Mr. Hastings intended to have kept them for his own use. The fact was, that no cash could be lodged in the public treasury without appearing in the Treasurer's account under some head or other. Mr. Hastings, therefore, applied to the Board for Bonds to be made out in his own name for their amount. The Bonds were granted accordingly, but Mr. Hastings never received either principal or interest upon them. On the contrary, he endorsed on them a declaration that neither principal nor interest was his own, but that both belonged to the Company. The date of the Endorsement did not agree

agree with the Account which Mr. Hastings had given thereof in his defence to the House of Commons; for he there says, that he endorsed the said Bonds and left them with Mr. Larkins to deliver up in case any accident happened to himself, much about the time of his going on a visit to the upper Province in 1781. But when a reference was lately made to the Bonds themselves, it appeared that they were not endorsed till the 29th of May, 1782.

The use which the Managers made of this mistake, was to excite a suspicion that Mr. Hastings never would have given up the Bonds at all, had he not received intelligence of an inquiry into India affairs then carrying on in a select Committee of the House of Commons.

I cannot find, however, that any proof was brought that made it appear even probable that Mr. Hastings had received any such information.

There was one circumstance which proved rather unfortunate to him in this transaction. Mr. Hastings had, in November 1780, written home an account of the present he received from Chyte Sing, and he had also advised the Directors in a letter dated the 20th of January, 1782, of his having received 10 lacks of Rupees from the Nabob of Oude, and in the May following, he with the assistance of Mr. Larkins made out an Account of all the presents he had received up to that period. The Account was inclosed in a letter written by Mr. Larkins on the 22d of May, 1782, and intended to have been dispatched by the Lively Packet, then
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in constant expectation of sailing for Europe. It so happened that the *Lively* was detained till the next December, and in the interim between May and December, an account had reached India of the inquiry by the House of Commons as abovementioned. To prevent any imputation or suspicion of the discovery having been made in consequence of that intelligence, the letter was opened, and an affidavit was made by Mr. Larkins, setting forth that the Account was made out and the letter which inclosed it written on the 22d of May, and that it had remained sealed till the 16th of December, and then opened for the express purpose of being accompanied by the affidavit. There was no way of criminating Mr. Hastings in this transaction without involving Mr. Larkins in the guilt of perjury; and there were reflections cast upon that gentleman in the Eleventh Report of the Select Committee, which wounded his feelings very severely. Mr. Larkins, however, has this consolation, that no uncandid insinuation can injure his honour in the opinion of those who know him. All who knew him in India, either in person or reputation, will agree that he was one of the last men in Bengal to be selected for the purposes of perjury.

It is somewhat remarkable, that Mr. Larkins is almost the only man in the service of whom all Administrations have spoken in the highest terms of approbation. Lord Cornwallis has said of him all that can be said of human nature; he describes him

as possessing *acknowledged probity, great ability, and unwearied application*. Such a man as this may mistake, but cannot commit a perjury.

I mentioned above that Mr. Hastings advised the Directors of his having accepted a present of ten lacks of Rupees from the Nabob of Oude, which was carried to the Company's Account. He did at the same time solicit the Company's permission to keep the said sum for his own use. His request was not granted. The Managers made the receipt of the money a matter of criminality, and the asking permission to keep it became matter of aggravation. There was also another present received of half a lack of Rupees from Nundolol, but there was not much stress laid upon the receipt of that, so I shall pass over it without further animadversion.

The last present was from Nobkissen. It amounted to three lacks of Rupees, and was received in the year 1783. Mr. Hastings, it seems, at first proposed borrowing the money for his own necessities, but at the time of receiving it, Nobkissen begged his acceptance of it. Mr. Hastings at that instant neither accepted nor refused, but after a time he agreed to take the money as a gift. He informed the Directors of what he had done, and proposed his keeping it in payment of certain contingent charges due to himself from the Company. The proposition was not rejected, and Mr. Hastings gave in his contingent Bills, and has kept the money in discharge of his just debt.

I call

I call it a *just debt*, because I cannot find that Mr. Hastings's claim on the Company for the contingent Charges he made out has ever been questioned by any of his greatest enemies, except Mr. Burke.

The only objection was to the mode he adopted for the payment of his own demand. It must however be remembered, that the Company's finances were very low in 1783, and it is probable Mr. Hastings thought the Directors would have less objection to his claim, when it was to be satisfied without adding to the weight of their then distresses.

The grand points which the Managers laboured to establish during the last Session, were these, namely, that Mr. Hastings received all these presents for himself originally, and that fear of detection and future punishment was his only motive for giving them up to the public treasury, and that the Company's lands were not let so advantageously as they would have been, had not the Governor General been under the influence of bribery and corruption. With respect to the first of these two points, I must recal to the reader's mind what I have repeatedly remarked during the course of this Elucidation; viz. that the perpetual dissensions in Council, and the almost unremitted opposition made to the measures proposed by the Governor General, induced him to do many things which he would not have done, had he been as free and unshackled as his successor Lord Cornwallis has since been.

If Mr. Hastings received sums of money without the knowledge of his colleagues, he also expended

sums of money for the public service without their participation or consent. Such was his sending to Ghimnagee Boosla three lacks of Rupees, by way of purchasing an uninterrupted passage for our army through Catac to the Coast.

The very money which he received in a present from Dinagepore and Nuddeah, was employed for this purpose. It was at that time very uncertain whether Mr. Hastings could have persuaded his colleagues to such a measure or not. But it is very certain that had Ghimnagee Boosla been induced either by resentment or distress to plunder the lower provinces, and to harrafs Col. Pearce's army on their way to Madras, the consequences would have been felt very severely by all the Company's Settlements in India, and particularly by Madras, which might have been lost to the English for ever.

I must confess that the several accounts given by Mr. Hastings and Mr. Larkins of the time of taking the several presents, and of various other circumstances relative thereto, do not agree with each other so well as might be reasonably expected. By a paragraph in one of Mr. Larkins's letters, it seems that Mr. Hastings had no written memorandums whatever, and the best account that Mr. Larkins could give, was collected from Persian and Bengally papers; translated by Mensheys and Sircars. As Mr. Hastings never considered the money as his own, the strongest impression made on his mind was that of being able to render service to his country by means which fortune had thrown into his way, and which

which it was not in the power of his colleagues to thwart or to oppose. It is highly probable that at the time of immediate danger to the state, he expected his countrymen would hold that meritorious, which now to his great disappointment and mortification he finds they hold criminal. The whole stream of his attention was in the years 1780 and 1781, turned to the preservation of the country over which he presided. It is not therefore to be wondered at, if in the diversity of objects that then occupied his mind, many of the trivial circumstances respecting the receipt of a few lacks of Rupees have escaped his recollection. To this and this only we must impute the want of accuracy in the accounts he has given of these transactions. And indeed I must say, that if ever Mr. Hastings intended to convert the presents he received from the natives to his own use, the means he made use of to conceal the receipt of them, were the most injudicious that could possibly be devised. Add to this, all the Evidence which the Managers ever brought or could bring on the subject was furnished by himself. Nothing was ever discovered that he did not voluntarily discover.

It was entirely at his own request that the Bonds were inquired for at the India House, and afterwards sent home by Mr. Larkins with the permission of Lord Cornwallis. Every application was his own. A man must be mad who knowingly and intentionally furnishes Evidence against himself. The account which Mr. Hastings gave of the presents he received,

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both in his letter from Cheltenham and in his Defence before the House of Commons, was from memory, and his recollections not being very perfect, he certainly blended together facts which happened at different periods. Such was his leaving the Bonds with Mr. Larkins in 1781 to deliver up in case of his death and his endorsing them the following year. Both facts he recollected, but not the time when they happened. Had Mr. Hastings foreseen that such rigid advantage would be taken of every little slip he might happen to make, he would doubtless have taken the same caution as a prudent tradesman does, who will give you no account till he has consulted his books. Few men who are giving Evidence in a Court of Justice will ever take upon them to make statements of accounts from memory, when the articles and relative circumstances have been committed to writing.

Were Mr. Hastings to insist on the common rule of Evidence, which is, that where a man's confession is received as testimony against himself, the whole confession shall be received as truth or no part of it at all. If this rule were to obtain in Mr. Hastings's case, the Managers would be under the necessity of believing, that whether the act was legally right or wrong, the intention was good and meritorious.

The second grand point which the Managers laboured to establish, was that Mr. Hastings abolished the Provincial Revenue Councils and instituted a Committee of Revenue at Calcutta, with a view of

of increasing his own power and authority, and of gratifying his own avarice and ambition.

To effect this, they read letters of Mr. Hastings to the Court of Directors, in which the then mode of collecting the revenues was commended, and a proposal made for rendering it perpetual by Act of Parliament. By the doing of this, they made it appear that Mr. Hastings had been rather too much in a hurry in passing judgement upon a measure not fully tried and examined. But surely there can be nothing criminal in a man's changing his opinion after conviction founded on experience. Who is there in this world that has not frequently changed his opinion upon one and the same subject? I might here say, that the accusers of Mr. Hastings are the last men in the world who should impute criminality to the fluctuation of opinion. It is probable, that whenever Mr. Hastings shall have it in his power to explain the motives of his conduct on this business, he may say, that in 1775 he felt the advantage of Provincial Councils; for whilst the Members of the Supreme Council were quarrelling upon every topic that came before them, the business of the Revenue went on without interruption, because it was conducted by other men; had it been transacted in detail by the Governor General and Council, the confusion occasioned by their dissensions would have stopped the course or at least have embarrassed the order of Collection. He may say also, that in 1773, he proposed the very plan for collecting the Revenues which he carried into effect in 1781, that
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he was over-ruled by his colleagues at the first period, and that in the interval between the two, he gave a preference to Provincial Councils, for the reasons above mentioned. But when the death of Gen. Clavering and Col. Monson had diminished the evils of opposition and dissention, he then saw the inconveniences of Provincial Councils in a stronger light than he had done whilst they were obscured by evils of greater magnitude. In other and fewer words he may say, of two evils, I chuse the least. The rock upon which Mr. Hastings's judgement is split lies here. In recommending to the Ministry to perpetuate Provincial Councils, he gave way to his feelings, and supposed that the then opposition and disagreement in the Supreme Council would last for ever, without considering that all evils rectify themselves by their own violence, and the stronger the paroxysm, the nearer the termination of the disease.

Much stress was laid by Mr. Fox upon the employment of Goonga Govind Sing. This man's character has been variously represented. Mr. Burke calls him a *bold atrocious villain, at the sound of whose name all India grows pale*. This must have been meant as a beautiful figure in speech, and not as a literal truth, for certain it is, that not a hundredth part of the inhabitants of India ever heard of his name. Mr. Moore and Mr. Young gave him a bad character also. Mr. Anderson spoke favourably of him, and Mr. Shore thought as well of him as he did of black men in general, adding, that
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he himself had selected the Son of Goonga Govind Sing for an appointment of great trust and importance. It does not appear that any charge has ever been substantiated against Goonga Govind Sing, and though he is no longer in a public office or employ, he resides in perfect security in Calcutta. There was an attempt made to criminate him soon after Mr. Hastings left the chair, but it failed.

Mr. Fox seemed to think it criminal in Mr. Hastings to employ a man against whom an accusation had been brought though not substantiated. Mr. Fox surely would not have held this doctrine, had he reflected upon the consequence of admitting it in all cases, neither has it been the practice in any state to disqualify a man for public employ upon no better ground than that he has been accused. Lord Danby was impeached in the reign of Charles II. discharged without a trial in the reign of his Successor, was appointed to high offices by King William, who created him a Duke, after which he was again impeached and again employed. Lords Somers, Portland, Orford, and Halifax, were impeached by the Commons in the reign of Mary and William, and held the highest offices in the state under Queen Anne. The last Parliament but one passed severe votes against the Marquis of Buckingham and Mr. Pitt, and yet they are again employed, and I believe few people think the worse of them for any thing contained in those votes of censure. Sir Robert Walpole was expelled the House of Commons for notorious corruption, and

was afterwards for twenty years the leading Minister of this kingdom. The Duke of Marlborough and Lord Townshend were accused and condemned by the House of Commons, and yet they both enjoyed high offices under George I.

An accusation, somewhat similar to that brought against Goonga Govind Sing, was by the City of London urged against the late Lord Holland. Mr. Fox was himself turned out of office in rather an abrupt manner, as he himself described it, and if the reason I have heard assigned for his being so turned out be true, it would operate as forcibly against his being re-instated, as any accusation could against Goonga Govind Sing. It were needless to say any more upon this point of Criminality, and I have no doubt but Mr. Fox upon re-consideration would for his own sake abandon it.

Another method taken by the Managers to show that Mr. Hastings must have acted corruptly was, the statement of the Revenue Accounts for some years previous to, and some years subsequent to the abolition of Provincial Councils. But this kind of proof seems to make very little in their favour. The amount of the sums received into the treasury was liable to variation both before and after the change of system; but it appears from the account given in Evidence that the product of the three last years next after the alteration exceeded that of the three immediately preceding by about thirteen lacks of Rupees. This circumstance, together with the continuation of the new system under Lord Cornwallis,

wallis, is a full refutation of all that can be said against the abolition of Revenue Councils on the score of profit and loss. The Company certainly have not been sufferers by the alteration.

Another mode attempted to fix criminality on Mr. Hastings, was to show that the farmers and renters were injured by it, and that the impoverishing of the inhabitants must in the end be injurious to the interest of the Company. This effect has certainly not been produced in the course of eight years which have succeeded that arrangement, if we are to credit the Accounts sent home by Lord Cornwallis as detailed to us by Mr. Dundas in his India Budget. There is certainly much apparent contradiction in the votes of the House of Commons on this article. With respect to Mr. Hastings, they voted that his administration of the Revenue and the system he adopted had ruined the country, but with respect to Mr. Dundas's Budget, they voted the same country to be in a flourishing state, holding out to the public the prospect of an increasing Revenue, and a large annual surplus. How these two votes can be reconciled, I know not. This much I can, however, take upon me to say, that the Provinces of Bengal were in the time of Mr. Hastings's Government as well treated, and the inhabitants seemed to live as happy as could possibly be expected, when it is considered that India is governed, not with an eye to the prosperity of itself, but with an eye to the advantage of its Conquerors.

The first consideration has ever been, and ever will be in all conquered countries, to raise such Revenues as will suffice to keep the conquered in a state of subjugation, and to remit an annual balance to the superior state.

How widely different is the state of Great Britain, a kingdom which partly by trade and partly by conquest has drawn to itself immense wealth from near, and distant nations.

In the years 1778 and 1779, I was employed on a survey in the hills near Ragemahl. I crossed the country in many directions, and had various opportunities of conversing with the natives, and of observing the manner in which they lived. Having no European with me I was, for the sake of society, necessarily driven to associate a good deal with the natives. At almost every village I came to, I had an opportunity of conversing with its chief Magistrate, who usually came to solicit a guard to prevent the camp followers from committing depredations. I do not remember in the whole course of my survey having heard more than one or two people complain of the English Government. In general, the villages seemed to be populous, and the lands round them to be well cultivated. The time which I speak of was previous to the year in which the Revenue Councils were abolished, but I never did hear from any person who had travelled through the different provinces, that they were in a state less flourishing after the change of system than they were before.

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I believe no Governor ever studied the prosperity of the country over which he presided more than Mr. Hastings did whilst he was Governor of Bengal. If the original plan were not his, he certainly adopted and carried into effect the scheme for civilizing the Mountainers who inhabit a vast tract of hills near the city of Ragemahl. These inhabitants of the woods used to come down in bodies, and commit vast depredations upon the people who dwelt in the plains below them, and it is owing to Mr. Hastings that these evils exist no longer. Before I left India in 1785, I saw the same people, who, whilst I was on a survey about six years before, were almost as wild and full as mischievous as the beasts in the forest, perfectly civilized and employed in preventing the robberies they used to commit. These are not the acts of a Governor who is regardless of the welfare of those whom he governs. It will therefore require a much stronger proof than any which has ever yet been adduced by the accusers of Mr. Hastings, to make me believe that he ever would have permitted the natives to be oppressed, much less to encourage or abet the oppressors.

I have now gone through the several charges against Mr. Hastings, as far as the Managers have brought them into Evidence. It is true, there are many Articles more which probably would have been entered into, had not the dissolution of Parliament put a stop to the proceedings. Whether the dissolution of Parliament has put a *total* stop to all further proceedings without beginning *de novo*,

is a question that has been much agitated, and seems very difficult of decision. The Lawyers themselves, who certainly ought to be the best qualified to speak on such a subject, seem as much divided in their opinions as other men. This incertitude must be owing to the want of steady precedents to guide their judgement, or perhaps to the want of leisure to consult them.

This diversity of opinion respecting the event of the Impeachment induced me to look into those few books which I had the means of perusing on this subject. The case which occurred to me as most in point to the present business, was that of the Earl of Danby. His Lordship was impeached by the Commons on the 23d of Dec. 1678 of High Treason. A debate arose whether he should be committed, it being the opinion of some Lords that, though the Commons had called his offence treason, it did not amount to a crime of such magnitude. The majority was against the commitment. It was apprehended that the Commons would complain of this as a denial of justice, and the consequence was a dissolution of Parliament. A new Parliament was called, and the Impeachment was resumed as soon as a dispute between the King and Commons concerning the Election of a Speaker was settled. It naturally became a question with the Lords, whether the Impeachment should be considered as alive or extinct. On the 19th of March 1678-9, the House came to a resolution, of which the following is a Copy :

Dis

Die Mercurii, 19 Martii, 1678-9.

“ The Lords this day taking into consideration
 “ the Report made from the Lords Committees for
 “ Privileges, that in pursuance of the Order in the
 “ 17th instant to them directed, for considering whe-
 “ ther petitions of appeal which were presented to
 “ this House in *the last Parliament*, be still in force
 “ to be proceeded upon, and for considering of the
 “ state of Impeachments brought up from the
 “ House of Commons *the last Parliament* and of all
 “ incidents relating thereto, upon which the Lords
 “ Committees were of opinion, that in all cases of
 “ appeals and writs of error, they continue and are
 “ to be proceeded upon in *statu quo* as they stood
 “ at the dissolution of the last Parliament without
 “ beginning *de novo*, and that the dissolution of
 “ the last Parliament doth not alter the state of the
 “ Impeachments brought up by the Commons in
 “ that Parliament.”

About the 25th of March the Lords acquainted the Commons that they had sent to apprehend Lord Danby, but that he had withdrawn. A disabling bill passed the House of Lords, and about the same time the Commons hearing that the King had granted a pardon to Lord Danby, declared the same to be illegal. They next resolved to bring in a bill of attainder against his Lordship, which was with some alterations or amendments agreed to by the
 Lords.

Lords. The alterations did not please the Commons, and they contended, that instead of a bill of attainder it became a bill of banishment. Several conferences took place, in one of which the Lord Privy Seal spoke of the order of the 19th of March, 1678-9, as a point gained to the Commons, that is, the continuation of Impeachments after a dissolution of Parliament. The Commons, however, did not consider it in that light, but contended for its being the antient course and method of Parliament.* The Commons at length prevailed, and the 21st of April, 1679, was appointed for Lord Danby's surrender. On 15th of the same month his Lordship surrendered himself, and on the 25th following the Lords acquainted the Commons that Lord Danby had put in his plea. He pleaded the King's pardon and the Commons denied the validity, and demanded judgement against him on the 25th of May. Two Days after the Lords acquainted the Commons that they had fixed the 10th of the same month for Lord Danby's making good his plea, and that they had addressed his Majesty to appoint a Lord High Steward. There were at that time five other Lords under Parliamentary prosecution. The Commons proposed the appointment of a Committee of both Houses to settle the mode of trial both as to them

* Mr. Hume in his History of England takes notice of this being an unprecedented case, and imputes the revocation of the Impeachment against Lord Danby to rekindled resentment, which the Commons entertained towards him on account of the dispute which had just before happened on the Election of a Speaker.

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and to Lord Danby. This proposal was not very well relished by the Lords, but it was at length acceded to. Upon this occasion disputes arose with regard to the Bishops, whom the Commons wished to exclude from voting in capital offences; whilst these conferences and disputes were carrying on, the King prorogued the Parliament till the 14th of August.

A new Parliament met on the 17th of October, 1679, and was prorogued to the 26th of the next January. After several prorogations, the Parliament met for the dispatch of business on the 22d of October, 1680, and was dissolved the 20th of January following, without taking any farther notice of Lord Danby. The next Parliament met at Oxford on the 21st of March, 1680-1, and was dissolved 7 days after their meeting. No other Parliament was convened during the reign of King Charles II. who died February the 6th, 1684-5. On the meeting of the first and only Parliament held in the reign of King James II. Lord Danby petitioned the House of Lords, as did three other Lords who had lain under Impeachments since the year 1678. The House took into consideration the hardship of their cases, and came to the following question, viz. whether the order of the 19th of March, 1678-9, be reversed and annulled as to their several Impeachments, which passed in the affirmative. Against this decision four Lords only protested, and gave for reasons,

1st, That it endeavoured an alteration in a judicial rule and order of the House in the highest part of their power and judicature.

2d, Because it laid aside an order made and renewed upon long debate, report of Committees of Precedents, and former resolutions.

3d, Because every Court of judicature ought to preserve the former rule of proceedings.

As King Charles had formed a resolution to govern as long as possible without Parliaments, and as Lord Danby had remained near three years in prison without any prospect of having his plea discussed, or being enlarged by trial and acquittal, he applied to the King's Bench to be admitted to bail, which was argued in May 1682. The Chief Justice checked his Lordship's Council, which induced Lord Danby to speak for himself. He argued his own case with great ability, and though he did not succeed upon the first, second, or third application to the King's Bench, he did at length (Hilary term 1683) convince all the judges, who unanimously agreed that he ought to be bailed. There are to be found in Lord Danby's Speech some very strong and apparently unanswerable arguments against the validity of a commitment by the House of Lords after the dissolution of Parliament. Possibly those and similar arguments induced their Lordships to annul the order of the 19th of March, 1678-9. It was however by virtue of this order that Lord Stafford was tried, condemned, and executed, in December 1680. This Nobleman was impeached by

by the second Parliament of King Charles II. on the 5th of December, 1678, and brought to trial by the fourth Parliament of the same King two years afterwards. One of the exceptions taken by the prisoner was, that the Impeachment, or I should say articles, were preferred in a former Parliament. This was answered by Sir William Jones and Serjeant Maynard, both eminent Lawyers and Managers, but I must say, the answer was very jejune and unsatisfactory. The latter, that what was once upon record in Parliament, might at any time afterwards be proceeded on, that it was a sudden objection, but that he conceived it had been done, and that if there were no precedent, he hoped, in such a case as this, the Court would make one. He concluded with saying, that reason was for it; but he did not attempt to shew in what manner reason favored his side of the question. Sir William Jones admitted, that a general impeachment was begun in the Long Parliament; but a particular one, he said, was begun in the last, that his Lordship had pleaded to it, at a time when he was not so well advised as at the present moment.

The stronghold, which Sir William Jones laid his hand on, was the resolution of the Lords on the 19th March, 1678-9, which I have already quoted at length. An argument of this nature was unanswerable by the Lords, who were bound to maintain their own resolution till formally rescinded and annulled.

Sir Francis Winnington spoke also to the same point, but rested entirely upon the order of the 19th of March above alluded to. Upon the whole, it seems to have been a very doubtful point, whether Impeachments were extinguished by a dissolution of Parliament or not, before that period, but the inconvenience of the resolution was so sensibly felt in the case of Lord Danby, that it continued not quite six years. Since the case of Lord Stafford, I believe the History of England affords no instance of proceeding being had upon an Impeachment begun by a former Parliament. In the case of the Lords Salisbury and Peterborough, in 1789, a Committee was appointed by the House of Lords to inspect precedents, and after the inspection thereof, and a consideration of the resolutions or orders of the 19th of March 1678-9, and the 22d of May 1685, the Lords above-mentioned were discharged from their bail. A protest was entered against this order by only eight Lords.

The next Impeachment which seems applicable to the present question, was of the Duke of Leeds in 1695. His Grace was accused by the Commons of corruption in a matter concerning the East India Company. On the 30th of April the Lords informed the Commons of the Duke's having put in his answer and accompanied their information with a copy of it. On the 1st of May the Lords sent a message to remind the Commons thereof, saying, that they thought themselves obliged in justice so to do, and to desire to know when they would be ready

ready to make good their articles, in order that a day may be appointed for that purpose.

The next day the Duke complained heavily of the delay of the Commons in not replying to his answer, alledging, that the Impeachment was only to load him with disgrace, and that they never intended to try him. On the day following, he pressed the Lords to discharge the Impeachment, unless the Commons replied. The same day, the Commons declared, at a conference, that the withdrawing of a material witness had occasioned the delay; in consequence of which, proclamation was made to prevent the witness from leaving the kingdom. A few days afterwards, the Parliament was prorogued, and in October it was dissolved, and a new one met on the 22d of the following March.

It does not appear that this Prosecution was ever renewed. In the case of the Earl of Oxford, a debate arose, "Whether an Impeachment was super-
 " seded by a prorogation of Parliament." Many
 Lords maintained the affirmative, but it was carried
 in the negative. A Protest was entered by eleven
 Lords, and one reason assigned was, "that they
 " could see no difference between a prorogation and
 " a dissolution of Parliament, which in constant
 " practice have had the same effect as to determina-
 " tion both of judicial and legislative proceedings,
 " and that this vote might tend to weaken the Reso-
 " lution of this House, made on the 22d of May,
 " 1685, which was founded upon the law and prac-
 " tice of Parliament in all ages, without one prece-
 " dent

"dent to the contrary, except in cases which
 "happened after the order of the 19th of March,
 "1678-9, which was reversed and annulled in
 "1685; and, in pursuance thereof, the Earl of
 "Salisbury was discharged in 1690." At that
 time it was not insisted on by any one that a dissolution of Parliament did not annul an Impeachment; neither do I know that it is insisted on now by those that are interested in the decision. It is true, the Lords may, if they please, reverse the order of May 22, 1685, and revive that of March, 1678-9, but whether they will or not, is a matter of much uncertainty. Serjeant Maynard, in the case of Lord Stafford, said, that reason was in favour of the Impeachment's remaining in *statu quo* after the dissolution of that Parliament which brought it forward, and to be so taken up by the succeeding Parliament. The Serjeant did not tell the Court what his reasons were for that opinion, and Sir William Jones rested very wisely upon the order of March, 1678. In my opinion, a variety of reasons may be urged in favour of the contrary doctrine; but my mind cannot suggest one in favour of the Serjeant's mode of thinking. One reason that strikes me very forcibly is this: The House of Commons is not a permanent body, but may be dissolved at pleasure. Every right and privilege which the Members enjoyed individually, ceases with the dissolution of the body to which they belonged; and indeed it would be highly absurd, if the case were otherwise. But it is equally absurd to suppose a non-existing body can have

have any rights or privileges after its civil death, and which never can revive again, unless the King should happen to die before a new Parliament is assembled. It is true, if a man be robbed or assaulted, and die before the prosecution is determined, there is no reason why the prosecuted party should be acquitted by the death of the injured one. The King sues the offender for a breach of his peace; and as all punishment, at the suit of the King, is for example more than vengeance, the utility of the prosecution is not at all diminished by the death of the real prosecutor. I am aware that the same may be said with regard to Impeachments, that they are at the suit of the People, and that the Commons are no more interested in the event than all the rest of their fellow-subjects. If this were really the case, it would be unanswerable; but every body knows that the reverse is the real truth. If I grant a power of attorney for the performance of a special act, that act is really mine. So also, if I give a general power of attorney, the acts of my agent are and ought to be considered as mine; and my not revoking the general power is a plain declaration of my being satisfied with his conduct. But were I obliged to give any person an irrevocable power of attorney for seven years, the acts which he performs would be virtually his and not mine.

By the Constitution of this kingdom, the consent of the people governed is necessary to the laws that are to govern them: but by the same Constitution they are obliged to make a temporary transfer of
their

their legislative power to a certain number of Deputies. Those Deputies, when chosen, are their own masters: they are not removable by their electors, and consequently enjoy, for seven years, all the legislative rights of the People. It may be said, that the People give their consent by their Deputies, but that doctrine is just as absurd as transubstantiation. No man can give a free and voluntary approbation to a thing that is to happen, before he has heard or thought of it. I consider a Member of Parliament's seat in the House of Commons much in the same light as I do a tenant for years possessing some part of a manor; it is his property till the lease expires, and he may do any thing with it, that is not contrary to the conditions of the lease. So a Member of Parliament has, by gift of his constituents, a seven year's right of legislation. I believe no man upon earth can deny the truth of what I have asserted. It must follow then that an Impeachment is, to all intents and purposes, an act of the Majority of the House of Commons, and that the People have, in fact, nothing at all to do with it. For were every County and every Borough in the kingdom to join in petitioning the House of Commons to desist from a prosecution, they are not bound to take notice of it.

In the year 1701, the Magistrates and Grand Jury of Kent presented a petition to the House of Commons, and the Gentlemen who delivered it were committed by the House, who voted the said petition to be scandalous, insolent, and seditious. Soon after,

after, a pamphlet was sent to the Speaker of the same House of Commons, known by the name of the Legion Letter, which reprehended the conduct of the House in terms of great severity. Among other grievances complained of, was this :—" That
 " the delaying of proceedings upon capital Im-
 " peachments, to blast the reputation of persons,
 " without proving the fact, is illegal and oppres-
 " sive, destructive to the Liberty of Englishmen; a
 " delay of Justice, and a reproach of Parliaments." These are strong and harsh words, but I do not quote them as applicable to the late House of Commons, for they certainly were not backward, however prolix their Managers may have been. I mention this last instance, and the foregoing, merely to shew that the voice of the People, with respect to Impeachments, had but little effect with Parliament. This was very justly considered as a seditious business; but the imprisonment of the Kentish Gentlemen was condemned by the greater part of the kingdom. I make no doubt but in general the House of Commons would, from prudential motives, give way to the wishes of the People; but their acts would not be less constitutional or more illegal on that account, if they did not.

When our Kings dissolve their Parliaments, it is evident that they do not consider them as speaking the voice or sentiments of the People; for the very object of calling a new Parliament, is to discover if the late Parliament did or did not speak the language of their Constituents. If then we agree that the

House of Commons, though the Representatives of the People, are in fact uncontrollable and irresponsible trustees, all the acts which they do, are undeniably their own.

Now let us suppose, that an Impeachment were to be considered as the prosecution of the People, and to continue from Parliament to Parliament, it might so happen that the Lords might send to a succeeding House of Commons to acquaint them of the day they meant to resume the Trial; the Commons might, with great propriety, return for answer, We know nothing of the matter—we never voted an Impeachment—we do not approve of it: The Prisoner must then be acquitted—and why? Not for want of evidence, but for want of prosecutors. It might then be said the People have changed their mind; they lodged a prosecution, and began the trial, and now, without leave of the Court, they withdraw the prosecution. Into this absurdity we must necessarily fall, if we maintain that an Impeachment remains in *statu quo*, descending from one Parliament to another. But if we suppose an Impeachment to be the act of our Representatives in their capacity of unlimited disposers of the People's legislative rights, and that all their acts not passed into law are as dissoluble as themselves in their corporate capacity, then there is no absurdity at all. One set of Delegates did one thing, and their successors do another. The Constituents are not betrayed into inconsistency and absurdity, as they must be if an Impeachment, begun by one Parliament

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and discontinued by another, be considered as the real and virtual act of the People at large. It is usual to say, that the act of the House of Commons is the act of the People; but if a legal decision is to rest upon it, we must soon find that it was built upon an aerial foundation.

Mr. Fox on the seventh day of Mr. Hastings's trial, and in his opening of the first article, gave a very true and just account of what an Impeachment really is, with respect to its origin and source. I will transcribe his words, as they were taken down by one of the Short-hand Writers:—"My Lords, "former Impeachments have been many of them "highly laudable; there have been some, in which "we might wish that some things had been different; but I believe they have all this in common—that they have generally been the prosecution of "a powerful and triumphant Party in the House of "Commons, generally on right principles, sometimes on "mistaken ones; but they have come to the Bar of this "House to impeach persons who have been so unfortunate "as to fall under their displeasure." According to this, and I believe no man in his senses who has ever read the History of England, will deny the truth of it—an Impeachment is, in general, a trial of political manœuvre, and strength of Parties. This alone would, with a cool, dispassionate, and disinterested man, be a very cogent reason why Impeachments should end with the Parties who brought them forward.

No doubt, when the Lords, in 1678, determined that Impeachments should pass from Parliament to Parliament, they went upon the idea, that though the Representatives were changed, the principals, that is, the People, were the same. But when they came seriously to consider the case of Lord Danby, and the Popish Lords, they saw the inconvenience of the order they had made, and consequently reversed it. The Judges were extremely puzzled how to act. They saw a prisoner of high rank committed by an existing body, and kept in prison by a non-existent body, if I may be allowed to use such an expression. Still they did not know how the Lords might consider their interference at their next meeting; and it seems to have been done with much apprehension, when they did at last consent to take bail. Lord Danby, in the course of his arguments before the King's Bench, put his own situation in a variety of strong and striking lights, and in every one the absurdity of the order of March, 1678-9, appeared more and more conspicuously. There was an absurdity in the idea of an inferior Court bailing a prisoner committed by a superior Court, which had refused bail. In that light it appeared to Chief Justice Pemberton. But there was an absurdity also in the idea of a person's remaining a prisoner *ad custodiam* only, under a commitment by a Court that had lost its existence, and was uncertain when it might recover it again: or, in other words, it was absurd that an annihilated authority should be of superior force

force and efficacy to any existing authority in the kingdom. By the order above-mentioned, an act of one single branch of the legislature acquired all the solidity and strength of an act of the three estates. But I do not see how the House of Lords can be considered as a permanent body, since sixteen of them are elective.

It is true, by far the majority of the Peers sit in Parliament by their own right, either hereditary or created, but as that House is compounded partly of Peers by inheritance, partly of Lords of Parliament by office or promotion, such as the Bishops, and partly of representatives of the Peers of Scotland, it never can be considered as a fixed and permanent Court of Justice. A King may according to the present Constitution govern without a Parliament, if he can find supplies of money, &c. for the space of three years, but no longer; yet when a Parliament is assembled at the end of three years, there is nothing that I know of that prevents a sudden dissolution again.

It were for these and many other reasons extremely absurd, that the unfinished acts of such an unsteady Court, both as to the time and duration of its sitting, should continue alive, while the Court itself is civilly defunct. But as the custom of Parliament now stands (at least what I conceive to be the custom of Parliament) all the difficulties vanish, an unfinished Impeachment dies and is extinct with the power of those who introduced it, and of those who were to decide upon it; then, on the meeting of a
new

new Parliament, if the Commons think there still remains matter enough to impeach the party accused a second time, there appears to be no very strong reason why they should not undertake it. But, as I said before, the preserving of an Impeachment alive after the dissolution of the Impeachers, makes the succeeding House of Commons heirs to the disputes of their predecessors. This is contrary to the genius and spirit of elective legislation, for the reason of dissolving one Parliament and calling another is to abate animosity and contention, and to put it into the power of the people at large to rectify the mistakes they may have made in the choice of their representatives. But if Impeachments are kept alive by some kind of magic, notwithstanding the total extinction of the Impeachers, and during the civil death of the judges, it follows that *quoad hoc* the dissolution of Parliament is of no use, and the people have no power of correcting the mistakes of their representatives, because the newly elected Members must follow the footsteps of their predecessors, unless they avoid it by falling into another absurdity, and make the people their constituents at variance with themselves, I mean that of refusing to prosecute when called upon by the Lords for that purpose.

The lawyers of former days introduced a number of fictions into their method of arguing, and it was generally done to extricate themselves out of some difficulty in which imprudence and want of foresight had involved them; but this I have observed, that

that whenever fiction is argued upon as a general principle, the consequences are nothing but a string of absurdities and contradictions.

There is also another apparent absurdity in continuing Impeachments alive after the dissolution of Parliament, particularly after the Managers have carried them to trial as in this instance. Those who conducted the business in one Parliament, may be disqualified from doing it in the next by not being re-chosen. How then could a trial in an advanced state be resumed by those who had never yet taken it up? But, independent of the absurdities I have stated and many others pointed out by Lord Danby, there is another strong reason against the resuscitation of Impeachments in *statu quo*, after a dissolution of one Parliament and in the beginning of another. Impeachments partake very much of the nature of legislation, and are exercised only by the three branches of the legislature; they assume to themselves the right of punishing for acts not made criminal either by the common law or the statute law of this Kingdom. One of the greatest blessings any nation can enjoy consists in having the nature and extent of criminality accurately defined, that is, that every subject may know what is criminal and what is not, and that the punishment of crimes should be left as little as possible to the discretion of the judges. This last rule cannot be universal, but the more general it is, so much the better for the subject. But the two Houses of Parliament, in their judicial functions, exercise their legislative capacity

pacity also, for if the majority in the House of Commons think any act wrong, no matter whether there can be a precedent found in common law or a prohibitory clause in statute law or not, they immediately call it criminal, carry up their charge to the upper House, and if the majority of the Lords agree with the Commons in thinking the act wrong, the party is condemned and punished. This power is entrusted to no other court; for in indictments and informations in the King's Bench, you must show that the act is an offence either by common law or statute, or the indictment will not lie; but an Impeachment will lie for any thing, for example, a Minister who makes a bad peace or a bad treaty, may be impeached, and it is not unreasonable to suppose that Mr. Fox and his party, had they been strong enough, would have impeached Lord Shelburne for the peace he made at the conclusion of last war. If then Impeachments partake so very much of the nature of legislation, and if it be the approved custom and usage of Parliament, that all acts not sanctioned by the express consent of the three estates, should by the dissolution of Parliament be utterly annihilated and extinguished, why then it is equally just and reasonable that Impeachments not finished should share the same fate.

In favour of perpetuating Impeachments I have heard this argument urged, that if the dissolution of Parliament extinguished an Impeachment, it would be in the power of the Crown to screen any offender from justice, for though he might be imprisoned

prisoned or bailed, yet as he would be set at liberty by a dissolution of Parliament, he might leave the kingdom and defeat the intentions of his accusers: this objection derives all its validity from a supposition of a case not likely, if possible, to happen. It is scarcely possible for any monarch, as the Constitution now stands, to govern for one year without preserving the confidence either of a Parliament or the People. If the House of Commons thwart the King's measures, an appeal may be had to the people as in the year 1784, but if the people approve the conduct of their deputies and return them again, I do not see how the business of Government can go on, until a good understanding be restored between the King and his Parliament. No cabinet minister will ever be found bold enough to advise his Majesty to dissolve a parliament for the sake of letting a traitor escape from punishment. One cannot make this supposition without making another very absurd one, namely, that there may exist a King who is an enemy both to himself and his people, but if the possibility, without the probability of a King's abusing his prerogative, or using it for the injury and not the good of the people, were a sufficient cause why the King should not be intrusted with it, it would follow that a King should be intrusted with no power at all; for there is scarcely a part of the royal prerogative that may not be turned to injury, if a King were inclined so to do. The Constitution of this kingdom must unavoidably trust the executive power with many prerogatives; the wis-

dom of our ancestors have contrived many checks, but it is useless to contrive a check for an event that is never likely to happen; besides, if it be thought dangerous to the welfare of this kingdom to leave it in the power of a King to deliver a criminal from the hand of justice by the dissolution of Parliament, it must be equally dangerous to leave it in the King's power to pardon the offender after trial, conviction, and sentence. No man will deny the King's power of pardoning after sentence, notwithstanding the King's pardon cannot be pleaded in bar of an Impeachment yet pending. It would be just as bad to pardon an offence, in defiance and opposition to the cries of the nation for justice, as it would be to dissolve a Parliament for the sake of letting an offender escape. Both would amount to the setting up of a separate interest between the King and people, and the flight of the criminal would amount to a confession of guilt equal if not superior in point of evidence to a legal sentence. I have heard also the precedents which I have quoted treated with ridicule because they happened in the reign of the Stuarts. It is true, the order of 1678, was made in the reign of Charles II. and that of 1685 in the reign of James II. but the recognizing of the last in the case of Lord Salisbury and his discharge thereon, happened in the reign of King William. The Tory interest did not prevail at that time. I agree with those, who think that a dissolution of Parliament ought not to annul an Impeachment, that bad precedents ought not to be followed. The changes and alterations to which all states are liable, often
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render a precedent which was very good at the time of making it a very dangerous one to follow at a future period.

For this and other reasons a judicial Court of so high an authority as the House of Lords, ought not to be indissolubly bound down by forms and precedents, but then there ought to be some very good and substantial reason for setting aside the old, and making a new precedent. If precedents were to be universally disregarded, the study of the law would be at an end. The Solicitor and Advocate would have to study the capacity and to discover the temper and passions of those who were to decide, and after all, a decision would be a mere matter of chance.

The incertitude of the law in this country has long been proverbial. It is certainly a great evil; but if precedents were disregarded, the incertitude would become greater, and the evil would be intolerable. A divided Government must adhere strictly to forms. Its very existence depends more upon form than substance. Our ancestors, in framing this Constitution, had an eye to the natural propensity which all men have to exercise arbitrary power, and therefore established forms and precedents for all the inferior Courts of Justice, well knowing, that if judges were allowed at all times to set aside precedents, it would amount to an annihilation of all the common law of this kingdom.

The only case that can consistently with reason justify the deviation from precedent is, where the

danger of following it, is greater than may be reasonably expected to attend the departure from it. The setting aside a precedent tends to unsettle the law. Inferior Courts follow the example of superior, and if precedents are treated with disregard by the House of Lords, the influence of it may extend to all the Courts in the kingdom. I have heard it objected to the precedents I have quoted, that in the year 1700, the Duke of Leeds having been impeached in a former Parliament, the Lords came to a resolution to discharge the Impeachment because the Commons did not proceed to prosecute. This has been held up as a kind of revocation of the order of 1685. In my opinion no sound argument can be drawn from so loose a determination; it does not say that the Lords discharged the Impeachment for that reason only, or that they would have gone on with the same trial, had the Commons urged them to it. The question before the Court was, not whether a dissolution annuls an Impeachment, but what is to be done with the Duke of Leeds? And the determination is, as nobody prosecutes, we shall discharge the Impeachment. It would be absurd to give a loose expression which passed without examination or debate, all the weight and efficacy of a resolution made after search of precedents, and a patient hearing of all the arguments that could be urged both for and against it.

I have also heard it said, and it was said with great truth, that there is no instance in the annals of England

land to which Mr. Hastings's trial can be compared, that in the cases I have cited, the proceedings had gone no farther than the charges, answer, and replication being given in to the House of Lords, and that the Commons had not begun with the adduction of evidence. All this is true, but it is impossible to draw any line after the accused has put in his answer, for the trial is as much begun and in a state of progression immediately after the accused is called upon to answer, as it can be at any subsequent period. When the prosecutors and prosecuted have joined issue, the trial is to all intents and purposes begun and going forward.

In what I have written with respect to the durability of Impeachments, I have considered Mr. Hastings as totally out of the question. I do not know what his sentiments nor those of his lawyers are on this point, having never conversed with either on this subject. I have treated it as a speculative question, into which I was led by the diversity of opinions which I have heard offered at various times by various persons. If I were asked, whether it were more to the interest of Mr. Hastings, that the Impeachment should revive in *statu quo*, or be begun *de novo*, I should not hesitate to declare in favour of the former. It would be a most cruel case indeed, were he made to stand the brunt of 60 or 70 days invective over again upon the Articles which are already gone through, and to furnish the same entertainment again to a numerous audience, who estimate the value of a ticket by the ratio

tion of abuse, and all this for the performance of acts which at the time of doing he thought highly meritorious.

Certainly when he taxed one rich subject in India, and confiscated the treasures of another, he thought he was serving *this* country by preserving our possessions in *that*; but now he finds that what he thought meritorious is by other politicians thought criminal in the extreme. It is owing to those crimes, (if they are crimes) that Mr. Dundas, who voted for the Impeachment, has at this moment so principal a share in the controul of all India, for without them there had been nothing to controul. In my inquiry into the probability of the Impeachment being ended by the dissolution of the last Parliament, I have been imperceptibly led into a greater length than I intended, and I may subject myself to the censure of the lawyers for meddling with a question wholly appertaining to their province; to their rebuke I must submit if they think fit to give it, and were I not deterred by the apprehension thereof, I might have carried my inquiries still farther into the nature of Impeachments in general. I shall however drop this subject, and conclude the work I have undertaken with some general remarks upon the manner in which Mr. Hastings's trial has been conducted.

The Leader of the Impeachment gave notice of his intended attack in the year 1785, and in the year following he made a variety of motions, in some of which he failed and in others succeeded.

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He carried his point at that time so far as to get the Benaris charge voted to contain impeachable matter. From that day it is very natural to suppose that Mr. Hastings must have suffered great uneasiness in his mind. The next year, viz. 1787, all the Articles were voted and carried up to the Lords, but the Session was too far gone to begin a trial which promised so much perplexity and delay. Whatever he might have felt the preceding year, he must have felt still more in the interval between the final vote of the Impeachment and the commencement of the trial. It may be said, that innocence has no reason to fear: That assertion, however, is not founded on truth. The opinions of men are often so divided upon the question of guilty or not guilty, that every man, however pure his heart may be, must be apprehensive whilst under trial for his own safety. In common cases the facts only are inquired into, and the judge in summing up the Evidence directs the attention of the Jury to facts only; for all criminal cases that are tried in inferior Courts of Justice have something in them either of the *malum in se*, or the *malum prohibitum*, but political offences consist too often in the spirit of parties. Dr. Sacheverel's Sermon would not have been thought criminal in the reign of James I. though it was deservedly condemned at a later period. The Managers of the present Impeachment have often maintained that they ought to be bound, not by the rules and forms of the common law, but by the *lex* and *consuetudo Parliamenti*. How variable the law and custom

custom of Parliament is, appears by the several votes and resolutions I have quoted so often in the course of this work; one would, however, be apt to think that Justice must be fixed and immutable, and that whatever rules were fit to be pursued in one Court were equally proper in another. For the reasons I have mentioned, every man's mind, whilst under an accusation by so powerful a body as the House of Commons, must be in a state of extreme solicitude; and however firm a reliance he may place on the justice of his judges, he cannot answer for the operation of their consciences. Every Peer, no doubt, follows the dictates of his conscience, but from their different votes upon many state trials, it is evident their consciences dictated a very different language. I mention this more particularly to show what state of mind every person must be in, who falls under the indignation of the House of Commons: he can have no property that he can call his own, for the fine may exceed his power of payment, nor can any person with safety confide property in his hands, for it may be swept away in the general ruin. The state of mind which I have described and perhaps much worse, though with a *mens sibi conscia recti*, Mr. Hastings must have suffered from the year 1787 to the present moment. But he could not have enjoyed much tranquillity for the two years immediately preceding. Every body knows that the delay of justice is almost tantamount to the denial of it. Of this delay Mr. Hastings complains, and with great reason. In saying this,

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I do not mean to reflect on the late Managers of the prosecution, for I will do them the justice to say, they were never backward on their parts. Much time was spent in making long Speeches, which in my opinion might have been condensed or abridged without losing any of their strength and energy. They certainly did not follow the example of that Athenian, who being asked what he was meditating on, replied, that he was thinking how to condense what he had to offer to the people, without losing any part of its signification. Brevity in speech is not their failing, but it matters not to what cause the delay is owing. It has certainly been enormously great, and has formed a precedent of a very dangerous tendency to the liberties of this country. It has militated, not only with Magna Charta, and with the principles of the Constitution, but with the principles of natural justice, and with the dearest and most valuable rights of mankind. Lord Danby, when he pleaded his own cause before the King's Bench, quoted the comment of Lord Coke upon the following words of Magna Charta, viz.

“ *Nulli vendemus, nulli negabimus, aut differemus*
 “ *justitiam*; that they are spoken in the person of
 “ the King who in judgement of law is always pre-
 “ sent, and repeating the said words, in all his
 “ Courts of Justice; and therefore every subject
 “ of the realm may at all times have a remedy by
 “ the course of the law, and may have justice done
 “ *freely, fully, and speedily* without delay, for delay

“ is a sort of denial.” The said Lord Coke observes farther, “ that those words of Magna Charta
 “ are fully explained by later Statutes, viz. 20th of
 “ Eliz. c. 3, which do direct that there shall be no
 “ delay or hindrance of speedy justice to any man,
 “ neither by any seal, nor by any order, nor any
 “ writ whatsoever, neither from the King, nor by
 “ any other cause.”

Lord Danby applied this doctrine to his own case, to shew that imprisonment for two years without a trial was against the laws of this country. His arguments did at length prevail over the reluctance of his judges and they consented to his being bailed. But if this quotation from Lord Coke applied with force and effect to Lord Danby's case, it applies with much greater to this of Mr. Hastings.

The trial of Mr. Hastings has lasted in one and the same Parliament for three years. There have been three prorogations and a Dissolution of Parliament since the Articles were presented to the Lords by the House of Commons. Certain it is, that our ancestors by the obtaining of Magna Charta, and by the enacting a variety of statutes in favour of liberty and natural justice, did suppose, as they very reasonably might, that they had barred the door to every species of oppression. In this, however, they were mistaken, for here we see an instance how a man, innocent, for any thing yet proved to the contrary, may be ruined in his fortune, health, and every thing that is worth living for, by a species of delay unprecedented in the his-

history of this country. I call it unprecedented, because upon looking over the six volumes of State Trials, which commence with the 11th year of Richard II. and end with the 16th of his present Majesty, there is not one instance of a trial's duration in any degree similar to this. The longest I met with is that of Archbishop Laud, which continued from the 12th of March, 1643-4, and ended, as to proceeding by Impeachment, the 11th of October following. On the 3d of January, 1644-5, he was condemned by bill of attainder, and executed on the 10th of the same month. This Prelate had been under confinement for a great while previous to his trial; but it must be remembered, that this case happened during the Civil Wars, at a time when the Constitution was torn to pieces by intestine convulsions. In times of greater tranquillity such a precedent would scarcely have occurred.

That the Lords themselves have at various times thought delay very incompatible with justice, is evident from the many messages they have occasionally sent to the Commons to remind them of the articles delivered in and not followed up in due course of time. In the cases of Lords Somers, Portland, Orford and Halifax, the House of Lords gave the Commons to understand that they thought it incumbent upon them to dispatch the trials of all the impeached Lords before the rising of Parliament; *that it was, what Justice required, and could not be looked upon as a matter of indulgence.* If it be true what the Lords there say with respect to the impeached Nobles,

bles, and I believe there is no man in the kingdom cruel enough to deny it, surely justice required that Mr. Hastings's trial should have been dispatched in less than three years. Happy had it been for that Gentleman, had the Lords in 1788 thought as they did in 1701. The evils of delay to a prosecuted person are innumerable, besides the enormous expence which no fortune, however large, can support. There is a danger of the party accused being convicted by the want of Evidence to substantiate his defence. It is impossible any man can keep his witnesses alive against the course of nature, and it is unreasonable to expect or desire witnesses to attend year after year, without any consideration for the loss of rank and emolument. Some witnesses, and those of great importance, Mr. Hastings has lost by death, and others who came from a foreign kingdom to bear testimony in his favour are gone back, and will probably never be prevailed on to return again.

Let us suppose a case not impossible to happen, that a prisoner who has been for years upon his trial, and has had the misfortune to lose his witnesses by death or unavoidable absence, should say to his Judges; "My Lords, I have had my witnesses ready for some years; many of them are now dead, and others could no longer support themselves in expectation; I could with the benefit of their allegations have cleared myself of all guilt, I now find myself deprived of the means to make good my defence and must fall a victim to delay." Is there

there a Judge upon earth, unless he disbelieved the prisoner's assertion, who could find his own conscience hardened enough to condemn him.

I do not know of any law existing that limits the duration of trials. It is seldom that the legislature of any kingdom provides a remedy before the evil exists. Had it been the custom of tyrannical Kings to keep persons whom they thought fit to prosecute for year after year on a criminal trial;—no doubt there would have been a clause in Magna Charta limiting the duration of criminal prosecutions, or there would have been a statute provided for that purpose; for surely the securing of every individual against the delays of the law is one of those blessings in which all mankind, from the highest to the lowest, is equally interested. It is true, there are very few men who ever can be brought to the bar to defend a thirteen years Administration of a foreign country, as Mr. Hastings now is, but there may be discarded Ministers who may be called upon to account for an Administration of equal length, who may be involved in equal difficulties with Mr. Hastings, and perhaps fixed to the bar for life. The spirit of party in this country has frequently run very high, and in no assembly higher than in the House of Commons. There may be leaders of a party who may avail themselves of this precedent to harass and distress where they cannot convict and condemn. The very case I am now deprecating, may, for any thing I know, be the case of Mr. Hastings; for though I am in my own mind fully persuaded, that the

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Lords cannot proceed upon the present grounds of Impeachment, without setting aside the last resolution in the case of Lord Danby, yet for any thing I see to the contrary, the Commons may begin *de novo*, as they did in the case of the Duke of Buckingham. Articles of Impeachment were exhibited against the Duke, in May 1626, and in the following month the Parliament was dissolved. The next Parliament met in March 1628, but they did not take it up in *statu quo*, as they must and would have done had there existed such a rule as was afterwards made in 1678. The Impeachment was just beginning *de novo* when a prorogation took place. Should this be the case with Mr. Hastings, that is, should the present House of Commons think his conduct deserving punishment, and vote a new list of Articles against him, he will act right if he profits by his former mistake and pleads guilty at once, for as Mr. Sheridan said, his punishment could not be more than imprisonment, and a diminution of his fortune; the latter part of this anticipated sentence has been already inflicted.

His fortune must be reduced very considerably indeed, by a three years criminal prosecution. But supposing the proceedings should be annulled by the dissolution of Parliament, and that the present House of Commons should be either so alarmed at the length of the proceedings, or so well satisfied with the innocence of the accused, as not to renew the prosecution, Mr. Hastings will then stand in a most miserable predicament. The proceedings, as far

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as they have gone, will appear at length among the State Trials. They will fill four or five volumes, and occupy nearly as much space as all the State Trials which have hitherto been handed down to posterity. The bitter invectives of the Managers will stand upon record unanswered and unrefuted. No future reader will believe it possible that so much can have been said without some foundation to rest upon. Thus may the character of Mr. Hastings be handed down to posterity with disgrace and infamy; for those very acts, which, had he had an opportunity of vindicating, he might have proved to his judges were honourable and meritorious. There is no man, however much he may hate Mr. Hastings as an individual, but must allow, taking it as an abstract question, that to suffer everlasting aspersions without the means of justification is an evil that calls aloud for redress and reformation. There are no bodies of people upon earth that have remonstrated and complained more loudly of acts of injustice than the British House of Commons has frequently done to the Monarch on his throne; consequently, no body of people upon earth ought to be more circumspect and careful, lest they oppress those they are bound by duty to protect. It is not, however, the mercy of Parliament which Mr. Hastings implores; it is acceleration of justice which he asks, and not compassion. Or if it is compassion, it is of that sort which the Lords have frequently shewn to Members of their own House, when under an impeachment by the Commons—I mean,

mean, the frequent reminding of the accusers of the evils of delay, and expediting the business as much as the custom and usage of Parliament would permit. There are many instances of the Lords acquitting the prisoner and discharging the impeachment, when the Commons have been backward in the prosecution.

Before I totally dismiss the subject, I must make a few observations upon what passed in the House of Commons on the eleventh of May last.

Mr. Burke moved the two following resolutions, which were supported by Mr. Pitt: the latter said, that they were so reasonable as to preclude all doubt of their receiving the concurrent assent of every Member present; and the House agreed to them accordingly:

“Resolved, that this House taking into consideration the interruptions occasioned by the occupations of the Judges and the House of Lords, and also the impediments which have occurred, and may incur, in the course of the trial of the Impeachment of Warren Hastings, Esq. doth, without meaning to abandon the truth or importance of the charges, authorize the Managers of the said Impeachment to insist only upon such and so many of the said charges, as shall appear to them most conducive to the obtaining of speedy and effectual justice against the said Warren Hastings.”

“Resolved, that the Commons of Great Britain in Parliament assembled, from a regard to their
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“own honour, as from the duty which they owe
 “to all the Commons of Great Britain, in whose
 “name as well as their own, they act in the public
 “prosecutions by them carried on before the House of
 “Lords, are bound to persevere in their Impeach-
 “ment against Warren Hastings, Esq. late Gover-
 “nor General of Bengal, until judgement may be
 “obtained upon important articles in the same.”

There is something extremely repugnant to my ideas of justice in the first Resolution; for it authorizes the Managers to abandon the prosecution of as many articles as they please, and at the same time says, “though we do consent to the dereliction of several charges, yet we still say the prisoner is guilty of all we have alledged against him;” that is, we will proclaim him to be a base man to all the world, but we will not give ourselves the trouble to prove it. It will take up too much of their Lordships time to hear our proofs, and the Judges have something else to do besides spending their time in Westminster-Hall.

It is a very serious thing for a man to be thus stigmatized by so great a body as the House of Commons of Great Britain; and I believe no man can be found of effrontery enough to say, that it is not cruel and oppressive: out of the great respect which I owe to the Representatives of the Commons of Great Britain, I will not consider it in the same light as I would do were it between two private individuals. In a similar case between the latter, I should not hesitate to say, that to deprive a man of

his character in any manner or way that puts it out of the power of the defamed person to defend or retrieve it, would be one of the most iniquitous acts, next to murder, that human nature is capable of. It is said in our law books, that a King can do no wrong; but I do not recollect having heard or read, that either House of Parliament is equally infallible and secure from errors. To accuse, and not substantiate the Charge, has been often thought actionable by the Courts of Justice: actions have been brought, and large damages have been given, for indictments rashly presented. But to accuse, and not even to attempt the substantiation of the Charge, has always, and very justly, been held actionable by all lawyers of all ages. But the House of Commons, armed with innumerable and undefined privileges, are not accountable to the courts of justice; they are responsible to none but their constituents, and that responsibility goes no farther than to the chance of rejection upon their next canvassing for a re-appointment.

Had I been one of the Members of the House of Commons, I certainly should not have objected to the abandoning as many articles as the Managers thought fit; but I should have felt some reluctance in consigning a character to everlasting infamy and disgrace, without making good all that we had joined issue upon, and had alledged against it; that is to say, I would have left out those words, *without meaning to abandon the truth, &c. &c.* from the Resolution.

Posterity,

Posterity, when they shall refer to the Journals of the House of Commons for precedents, will probably be struck with an idea, that the Managers were afraid to come to issue upon many of the articles, as the Resolution seems to insinuate that some of them were not very conducive to the obtaining speedy and effectual justice against the accused.

The next Resolution is to me almost unintelligible; but the sense in which I understand it is, that the Commons cannot forsake the prosecution without subjecting themselves to the reproach of the world for bringing a charge which they could not make good; and that as they had committed the credit of the people at large, by making use of their names in the Impeachment, it was therefore a duty incumbent on the House to get Mr. Hastings convicted by some means or other. By this it seems that the perseverance in the prosecution is more for the purpose of saving themselves than for condemning him. I may have mistaken the sense, and it may mean something very different; but this I am sure of, that the cause or reason now held forth to the world for prosecuting Mr. Hastings, is very different from what it used to be. Formerly the object was to retrieve the national character, which had been grievously injured by the oppressions Mr. Hastings committed upon the unhappy natives of Indostan; but now that the natives in their petitions say that they never were oppressed; now, that after the total annihilation of Mr. Hastings's power in India, they all unite in

his praises, the gentleman who moved the Resolution is driven to assign other reasons for continuing the Impeachment.

The reasons *now*, are, *honour* and *duty*; that is, having said it, we must stand to it; and having committed the credit of the people, whose name we took *pro forma*, rather than for substance, we must, in duty to them, guard the public reputation by condemning Mr. Hastings. I again say, that I do not know this to be the meaning of the Resolution, but it is that which it impressed upon my mind at first reading, as it now does after much consideration of its true import. Supposing my construction to be right, I do then say, that I differ *totò celo* with Mr. Burke, in the signification of *honour* and *duty*: I hold this doctrine, that there is infinitely more honour and dignity in acknowledging an error, than in defending it; that there is more duty shewn to the people in acts of solid and substantial justice to an individual, than in making them nominally triumphant over a fallen man, who never injured or offended them, but whose whole life has been spent in their service, and to whose zeal and activity they owe a great part of their national reputation. It is a *duty* I firmly believe, which nine tenths of the inhabitants of this Kingdom would have readily remitted to the late House of Commons.

These Resolutions read very well to a cursory eye, but when they are analyzed, like most other general professions, mean nothing at all; or if they have
any

any meaning; it is very different from what was intended to be expressed.

I hope I shall not incur the displeasure of the present House of Commons by animadverting on the last; it has been my study, in all I have written, to avoid giving offence, both to public bodies and to private individuals; but as it may happen, as it certainly has frequently happened before, that a House of Parliament may pass a vote or resolution on the suggestion or motion of some popular leader, which, upon farther consideration, may prove detrimental and ill advised; so it is a right that every Englishman claims, to point out in a respectful manner the advantages which may arise from rescinding an oppressive Resolution.—Were I a member of the House of Commons, I should certainly endeavour to persuade my associates, that the most effectual method of making the natives of India believe that we were sincere in our good intentions towards them, would be to restore all the presents which Mr. Hastings has taken from the several Rajahs and Nabobs, and to pay back the confiscated treasures of the Begums. A step of this kind would have a stronger effect on their minds, than all the speeches that ever were or ever will be made against speculation and corruption. The prosecution of Mr. Hastings for receiving illegally sums of money for the Company's use, without restoring the said sums to their former owners, resembles the case of Phcebidas in the Grecian history, who was punished by the Spartans for taking Thebes, in direct violation
of

of a treaty of peace: his honorable masters condemned the act, whilst they enjoyed all the advantages of it; for they kept possession of the place without once considering, that if it were unjust in Phœbidas to seize the city, it was no less so in them to keep it. This behaviour of the Spartans has been very justly stigmatized by all the historians who have treated on the subject.

After I had sent the foregoing sheets to the press, I had an opportunity of seeing a copy of a letter from Lord Cornwallis to the Court of Directors, dated the 8th of February last; I could not help observing, that the pressure of circumstances had very nearly driven his Lordship to take a step exactly similar to one which is made matter of great criminality in Mr. Hastings: I allude to his Lordship's determination to leave the Presidency and go to the Coast, which journey was prevented by the arrival of General Meadows: the words of his letter are, " My sense of duty to you and to my
 " country called upon me to dispense with the com-
 " mon forms upon so critical an occasion, and tho'
 " I knew that several great inconveniencies might
 " arise by my quitting the immediate direction of
 " the supreme government, and I was also sensible
 " that the measure would not have been sanctioned
 " by any existing law, I determined to take the re-
 " sponsibility upon myself, and to propose that the
 " supreme Board should invest me with full powers
 " to take a temporary charge of the civil as well as
 " the military affairs of Fort St. George, in order
 " to

“ to endeavour by my own presence to prevent a
“ repetition of the disgraces and calamities which,
“ under nearly similar circumstances, happened
“ early after the commencement of the last war with
“ Tippoo's father.”

Here we see an instance of the impossibility of governing a distant country by rigid rules and ordinances; something must always be left to discretion. In order to decide upon the merit or demerit of the breach of orders in a Governor and Commander in Chief, there is but one question to be asked, namely, Was it absolutely necessary? By this rule Mr. Hastings's conduct ought to be tried; to this I dare say he will readily submit; and if it be found that any of those actions, which were the subjects of the three Articles already brought forward in Westminster-Hall, proceeded from selfish views, and not from zeal for the public service, then he certainly deserves severe punishment; but if on the contrary, it shall appear that those actions were done with the best of intentions, and that they really proved the salvation of our territories in India, then he deserves, not only an honorable acquittal, but the warmest thanks and highest rewards from his grateful country.

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| | 10 View of Natives and a Hut in New South Wales |
| | 11 View of New South Wales |

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